No. 86-2016

IN THE

Supreme Court of the United States

October Term, 1986

GREG MYERS, etc., et al.,

Petitioners,

vs.

R. KATHLEEN MORRIS, etc.,

Respondent,

and

DONALD BUCHAN, etc., et al.,

Petitioners,

vs.

R. KATHLEEN MORRIS, etc.,

Respondent,

and

DANIEL J. MEGER, etc., et al.,

Petitioners,

vs.

R. KATHLEEN MORRIS, etc.,

Respondent,

and

CHARLES LALLAK, etc., et al.,

Petitioners,

vs.

R. KATHLEEN MORRIS, etc.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

JOINT APPENDIX

HANLEY, HERGOTT & HUNZIKER
Thomas J. Hunziker
701 Fourth Ave. S., Suite 1400
Minneapolis, Minnesota 55415
(612) 338-6990
Attorneys for Petitioners
Charles and Carol Lallak
and
DUNKLEY AND BENNETT, P.A.
Michael D. Madigan
701 Fourth Ave. S., Suite 1400
Minneapolis, Minnesota 55415
(612) 339-1290
Attorneys for Petitioners
Jeffrey and Jennifer Lallak

KURZMAN, GRANT, MANAHAN, BLUTH AND BARKER
Marc G. Kurzman
Counsel of Record
Carol Grant
2404 Stevens Avenue South
Minneapolis, Minnesota 55404
(612) 871-9004
Counsel for Petitioners
Greg Myers and Donald Buchan

ANTHONY L. NOTERMAN, ESQ.
P.O. Box 158
Shakopee, Minnesota 55379
(612) 445-3844 and
MURPHY, BLANCHAR & ELLIOTT
Patrick H. Elliott
7407 Wayzata Boulevard
Minneapolis, MN 55426-1675
(612) 546-4472
Attorney for Petitioners Meger

1987/EXECUTEAM/LAW LINES DIV., 93 W Little Canada Rd., St. Paul, MN 55117 / (612) 483-8793/800-328-8322

216pet

ALL THE PETITIONERS IN THE MYERS, ET AL V. MORRIS, ET AL CASE

Greg Myers and Jane Myers, individually and as parents and natural guardians of Andy Myers, Amy Myers, and Brian Myers, minors.

*****

ALL RESPONDENTS IN THE MYERS, ET AL V. MORRIS, ET AL CASE

Scott County and R. Kathleen Morris, Scott County Attorney; Scott County Human Services and Peg Subby, its Director of Human Services; Thomas Price, and Phipps-Yonas Price, P.A.;

Paul Thomsen, Guardian Ad Litem; Doris Wilker, Social Worker; and other employees of Scott County Human Services whose names and titles are unknown; and Douglas Tietz, Scott County Sheriff; Deputy Sheriffs Norm Pint, Patrick Morgan and Michael Busch and City County of Jordan Minnesota, and Alvin Erickson, Jordan Chief of Police.

ALL THE PETITIONERS IN THE BUCHAN, ET AL V. MORRIS ET AL CASE

Donald Buchan and Cindy Buchan, individually and as parents and natural guardians of Courtney B. Buchan, Melissa Ellen Buchan and William Donald Buchan, minors.

*****

ALL THE RESPONDENTS IN THE BUCHAN, ET AL V. MORRIS, ET AL CASE

Scott County, R. Kathleen Morris, Scott County Attorney; Scott County Human Services, Peg Subby, its Director of Human Services; Thomas Price, Phipps, Yonas and Price, P.A., Michael Shea, Shea and Associates,

Diane Johnson, Guardian ad litem, John Manahan, Guardina ad litem,

Doris Wilker, Social Worker; Mary Tafs, Social Worker; Judy Dean, Social Worker; Susan DeVries, Psychologist; other employees of Scott County whose names and titles are unknown; Douglas Tietz, Sheriff of Scott County.

ALL THE PETITIONERS IN THE LALLACK, ET AL V. MORRIS, ET AL CASE

Charles Lallack and Carol Lallack, husband and wife; and Jeffrey Lallack and Jennifer Lallack, minors, by Charles Lallack and Carol Lallack, their parents and natural guardians.

*****

ALL THE RESPONDENTS IN THE LALLACK, ET AL V. MORRIS, ET AL CASE

Scott County; Scott County Board of Commissioners; Scott County Attorney's Office; R. Kathleen Morris, Scott County Attorney; Scott County Sheriff's Department; Douglas Tietz, Scott County Sheriff; Michael M. Busch, Scott County Deputy Sheriff; Patrick Morgan, Scott County Deputy Sheriff; David Einertson, Scott County Deputy Sheriff; Norm Pint, Scott County Deputy Sheriff; Other employees of Scott County Sheriff's Department whose names and titles are unknown; Scott County Human Services Department; Rachel Paff, Social Worker with Scott County Human Services Department; Other employees of Scott County Human Services Department whose names and titles are unknown;

Larry Norring, Officer with Jordan Police Department, Thomas L. Price, and Phipps-Yonas & Price, P.A.

ALL THE PETITIONERS IN THE MEGER, ET AL V. MORRIS, ET AL CASE

Daniel J. Meger and Wanda Lou Meger, individually and as parents and natural guardians of Brian Meger and Chad Meger, minors,

*****

ALL THE RESPONDENTS IN THE MEGER, ET AL. V. MORRIS, ET AL CASE

Scott County, a Political Subdivision of the State of Minnesota; R. Kathleen Morris, individually and in her official capacity as attorney for Scott County; Scott County Board of Commissioners; Scott County Welfare Department and Margaret Subby, it's Director of Human Services; Scott County Sheriff's Department and it's Deputies, Patrick Morgan and Michael Busch; Doris Wilker, Social Worker, Scott County Welfare Department; Joel Kaufmann, psychologist, Scott County Welfare Department; Jane McNaught, and Center for Child and Family Therapy; B. A. Bershow, M.D., and Burnsville Family Physicians, P.A.; John Doe and Mary Doe and other employees of Scott County whose names and titles are unknown,

IN THE

United States District Court

DISTRICT OF MINNESOTA
FOURTH DIVISION

GREG MYERS and JANE MYERS, individually and as parents and natural guardians of Andy Myers, Amy Myers and Brian Myers, minors,

Plaintiffs, Civil No. 4-84-1066

vs. FIRST AMENDED COMPLAINT

SCOTT COUNTY and R. KATHLEEN MORRIS, SCOTT COUNTY ATTORNEY, SCOTT COUNTY HUMAN SERVICES, and PEG SUBBY, ITS DIRECTOR OF HUMAN SERVICES, THOMAS PRICE, and PHIPPS-YONAS & PRICE, P.A., PAUL THOMSEN, GUARDIAN AD LITEM, DORIS WILKER, SOCIAL WORKER, AND OTHER EMPLOYEES OF SCOTT COUNTY HUMAN SERVICES WHOSE NAMES AND TITLES ARE UNKNOWN, AND DOUGLAS TIETZ, SCOTT COUNTY SHERIFF,

Defendants.

Plaintiffs, for their Complaint herein, allege:

JURISDICTIONAL STATEMENT

(1) This action arises under, and jurisdiction is based upon U.S. Code Title 42, Section 1983 and Section 1988. The plaintiffs are persons within the jurisdiction of the United States who

have been deprived of their rights, privileges, and immunities secured under the laws and Constitution of the United States. The defendants having injured the plaintiffs causing them damages in excess of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

GENERAL ALLEGATIONS

(2) Plaintiffs Greg and Jane Myers are residents of Jordan, Scott County, Minnesota. Plaintiffs are husband and wife, married on 4/28/78. They have three minor children, Andy, born 6/16/72, age 14; Amy, born 4/8/79, age 5; and Brian, born 4/25/82, age 2.

(3) Defendant R. Kathleen Morris is the County Attorney and chief legal officer and agent of Scott County.

(4) Defendant Douglas Tietz is the County Sheriff and agent of Scott County. Defendant Sheriff Tietz failed to properly supervise deputy sheriffs and negligently allowed them to act at the direction of the County Attorney, defendant Morris, who was acting as an investigator and initiator of charges against Plaintiffs Greg and Jane Myers. Defendant Sheriff Tietz was grossly negligent in failing to properly supervise deputy sheriffs and allowing them to work at the direction of defendant Morris in depriving the plaintiffs and their minor children herein of their statutory and constitutional rights.

(5) Defendant Doris Wilker is a social worker employed by Scott County Human Services. In addition to the other actions alleged below she acted as the primary questioner and interrogator of the minor plaintiffs and in this capacity subjected them to emotional trauma and psychological abuse as a result of coercive and cruel questioning techniques and also as a result of her failure to attempt to corroborate statements by the Myers' children which exculpated their parents.

(6) Defendant Paul Thomsen is the court appointed guardian ad litem for the Myers' children. Defendant Thomsen in addition to the other acts alleged herein, also engaged in a pattern of activity which was coercive and abusive to the minors placed under his direction by the Court in violation of his legal duties, in that he also interrogated the Myers' children in an attempt to

elicit additional accusatory reponses from them as well as permitting defendant Morris and defendant Wilker to question and interrogate the children under circumstances where it was apparent that their emotional and psychological well-being was threatened. Defendant Thomsen permitted and participated in the isolation and confinement of the Myers' children in an attempt to coerce them into making responses which would be favorable for the State's case against their parents.

(7) Defendant Thomas Price practices in an association known as Phipps-Yonas & Price. In addition to the other actions alleged herein, defendant Price served defendant R. Kathleen Morris by providing her with psychological evaluations of the Myers' children. In addition to providing these evaluations, defendant Price interrogated the Myers' children and manipulated them psychologically and transmitted the confirmation of allegations to defendant R. Kathleen Morris in negligent disregard of the truth of those confirmations. Furthermore, defendant Price held himself out as a "psychotherapist" but was really practicing psychology, which requires a licence, when in fact Mr. Price held no licensure or certification by the State, a misdemeanor within the ambit of M.S.A. § 148.97.

(8.1) On or about February 6, 1984, the defendants Scott County, Scott County Welfare Department, Peg Subby, and R. Kathleen Morris caused, through their agents and under color of law, the forcible removal of the plaintiffs' three minor children from the plaintiffs' home.

(8.2) Defendants conspired to deprive the minor children herein of their rights under M.S.A § 13.40, subd. 2, the so-called "Tennessen warning," which is binding upon all social workers but not police.

(8.31) Defendants conspired to violate M.S.A. § 626.556, specifically including but not limited to subd. 10.

(8.32) Defendants conspired to violate M.S.A. § 260.165.

(8.4) Defendants conspired to violate Minnesota Department of Public Welfare Regulations set forth in 12 M.C.A.R. § 2.207, insofar as there was no attempt to place the children voluntarily or seek alternatives to ensure the safety of the children, there was no attempt to contact the family, nor were other legally necessary prerequisite steps taken prior to petitioning a court

for authorization to intervene.

(9) Defendant Morris then filed a criminal complaint against plaintiff Greg Myers in Scott County District Court, alleging numerous instances and counts of sexual abuse committed by Greg Myers upon his own children and upon other minor children.

(10) The defendants deliberately refused to disclose the location of the three children to plaintiff Greg Myers.

(11) Jane Myers appeared in Scott County Family Court for the purpose of re-establishing contact between her husband and his three children.

(12) After this appearance by her, defendants deprived Jane Myers of contact with or knowledge about her children.

(13) Also after this Court appearance by plaintiff Jane Myers, defendant Morris filed a criminal Complaint against her in Scott County District Court also alleging numerous instances and counts of sexual abuse committed by her upon her own children as well as other minor children.

(14) Defendant R. Kathleen Morris has, in the prosecution of criminal charges against the plaintiff, violated the laws and Constitution of the United States, the State of Minnesota and the Canons of Ethics governing the practice of law in her prosecution of the plaintiffs.

(15) Specifically, R. Kathleen Morris has:

(15.1) Destroyed material evidence in the form of audio and video tapes of interviews with alleged child victims, rather than disclose this potentially exculpatory material to defense counsel;

(15.2) Hid, covered up and withheld exculpatory evidence gathered at the State's direction by police and investigatory personnel;

(15.3) Threatened child witnesses who were potentially State's witnesses with jail, other punitive incarceration, and with threats that they would not see their parents again unless those witnesses gave testimony incriminating the accused adults; and

(15.4) Interrogated child witnesses using severely coercive methods which resulted in psychological disorders and traumas to these witnesses;

(15.5) Intimidated and accused child witnesses of lying if they

did not deliver incriminating testimony and lied to child witnesses by telling them that their siblings had already made incriminating staements about their parents;

(15.6) Encouraged child witnesses through role playing to collectively vent accusations;

(15.7) Offered bribes, in an effort to obtain prosecution witnesses;

(15.8) Suborned perjury of major prosecution witness in exchange for plea bargaining concessions;

(15.9) Entered into an illegal plea bargain which was contingent upon an after the fact evaluation of the usefulness of the convict's testimony to the prosecution;

(15.10) Misrepresented the nature of the plea bargain entered into with convicted child molester, James Rud to victims of his acts;

(15.11) Misrepresented the interrogation of child witnesses by a social worker as interrogation by a psychotherapist when in fact that person was unlicenced as a psychotherapist; and

(15.12) Represented to the trial court and defense counsel that Family Court appointees, foster parents, guardians ad litem, and social workers were not engaged in collecting information for the prosecution.

(16) These actions by defendant R. Kathleen Morris alleged in this Complaint she took while acting in her capacity and office as an elected official and agent for Scott County. These actions went beyond her official capacity as prosecutor insofar as she acted as an investigator.

(17) All of the actions alleged herein represent the official deliberate policy or custom of the office of Scott County Attorney and the Scott County Board.

(18) The aforesaid arrests, confinement, separation of the family and interference with the family relation were made under color of the statutes, ordinances, regulations, customs and usages of the State of Minnesota and deprived plaintiffs of their rights, privileges and immunities under the United States Constitution and laws, specifically including but not limited to United States Constitution Article XIV, Section 1, in that plaintiffs have been deprived of their liberty without due process of law; United States Constitution Article IV, in that plaintiffs

have been denied their right to be secure in their persons and home and from having their persons seized without warrant issued upon probable cause, supported by oath or affirmation; and United States Code, Title 42, Section 1983, in that plaintiffs have been deprived of their rights, privileges and immunities secured by the United States Constitution and laws by defendants acting upon color of Minnesota statutes, ordinances, regulations, customs and usage, and the freedom of religion guaranteed plaintiffs under the First Amendment to the United States Constitution.

(19) The aforesaid actions by defendants were acts in furtherance of a conspiracy. Defendants and specifically R. Kathleen Morris and her office were engaged in a publicly campaign against child abuse and incest. Part of this campaign involved the invention by defendant Morris and others of a "sex ring" in Jordan, Minnesota. Defendants attempted to legitimize this invented "sex ring" by producing a large number of arrests and prosecutions in Jordan for sexual abuse of children. Defendants thus in furtherance of this conspiracy recklessly sought out plaintiffs as candidates for prosecution. These arrests were thus made without making any adequate substantiated inquiries regarding the welfare of the plaintiffs' minor children and without probable cause and in willful disregard of plaintiffs' rights, privileges and immunities secured by the United States Consititution and the law and Constitution of the State of Minnesota.

(20) The defendants by failing to make reasonable inquiries before removing the Myers' children from the family home and by initiating a criminal prosecution against Greg Myers and Jane Myers without probable cause, in addition to being guilty of conspiracy as described in the preceding paragraph, were grossly negligent. As a result of this gross negligence, and of the other acts and omissions of the other defendants herein as previously alleged, plaintiffs have been greatly damaged, in that they have suffered great mental duress and anguish, have been wrongfully arrested and deprived of their liberty, wrongfully confined, have been caused to suffer damage to their family relations, have suffered alienation of affection between parent and child, have suffered injury to their reputations and

have been greatly damaged in their enjoyment of their home and community and currently live in a state of fear of reprisal and other unwarranted governmental action by all of the aforesaid defendants and other officials of Scott County.

(21) As a further result of their gross negligence the minor plaintiffs Andy, Amy, and Brian Myers have been caused to suffer emotional and psychological harm which has and will continue to damage their maturation, growth and development.

(22) All of the aforesaid acts, restraints, interferences, arrests and imprisonments were committed with a willful indifference to the rights of plaintiffs so as to subject defendant and each of them to punitive damages pursuant to the provisions of the statutes and common law of the United States of America.

(23) Because of the matters set forth in all of the preceding paragraphs hereof, plaintiffs have been forced to retain an attorney to seek vindication of their rights and to assure them of the further peaceful enjoyment of their rights as residents of their community and the State of Minnesota and the United States.

WHEREFORE, plaintiffs demand judgment of defendants and each of them, as follows:

(1) For an award of compensatory damamges in the amount of Twenty Four Million Dollars ($24,000,000.00).

(2) For punitive damages in an amount sufficient to deter defendants and other similarly situated, from committing such acts as are alleged in this complaint in the future, in an amount of Ten Million Dollars ($10,000,000.00).

(3) For plaintiffs' attorney's fees in connection with this action.

(4) For temporary and permanent injunction enjoining defendants and each of them, and all other officials of Scott County from taking any actions in reprisal for plaintiffs' having instituted this action or for any other reason.

(5) For such other relief as the Court may deem just or equitable.

/S/Marc G. Kurzman

Marc G. Kurzman
Carol Grant
KURZMAN, MANAHAN
& PARTRIDGE
601 Butler Square
100 North Sixth Street
Minneapolis, Minnesota 55403
(612) 333-4403

Attorney for Plaintiffs.

Dated: _____

IN THE

United States District Court

DISTRICT OF MINNESOTA
FOURTH DIVISION

Donald Buchan and Cindy Buchan, individually and as parents and natural guardians of Courtney Beth Buchan, Melissa Ellen Buchan, and William Donald Buchan, minors,

Plaintiffs,

vs.

Scott County and R. Kathleen Morris, Scott County Attorney, Scott County Human Services, and Peg Subby, its director of Human Services, Thomas Price, and Phipps-Yonas & Price, P.A., Michael Shea, and Shea & Associates, P.A., Diane Johnson, guardian ad litem, John Manahan, guardian ad litem, Doris Wilker, social worker, Mary Tafs, social worker, Judy Dean, social worker, Susan DeVries psychologist, and other

Civil No._____

COMPLAINT

employees of Scott County Human Services whose names and titles are unknown, and Douglas Tietz, Scott County Sheriff,

Defendants.

Plaintiffs, for their Complaint herein, allege:

JURISDICTIONAL STATEMENT

(1) This action arises under, and jurisdiction is based upon U.S. Code Title 42, Section 1983 and Section 1988. The plaintiffs are persons within the jurisdiction of the United States who have been deprived of their rights, privileges, and immunities secured under the laws and Constitution of the United States. The defendants having injured the plaintiffs causing them damages in excess of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

GENERAL ALLEGATIONS

(2) Plaintiffs Donald and Cindy Buchan are residents of Jordan, Scott County, Minnesota. Plaintiffs are husband and wife, married on April 1, 1978. They have three minor children, Melissa Ellen, born August 2, 1979, age 5; Courtney Beth, born August 25, 1981, age 3; and William Donald, born December 4, 1982, age 1.

(3) Defendant R. Kathleen Morris is the County Attorney and chief legal officer and agent of Scott County.

(4) Defendant Douglas Tietz is the County Sheriff and agent of Scott County. Defendant Sheriff Tietz failed to properly supervise deputy sheriffs and negligently allowed them to act at the direction of the County Attorney, defendant Morris, who was acting as an investigator and initiator of charges against plaintiffs Donald and Cindy Buchan. Defendant Sheriff Tietz was grossly negligent in failing to properly supervise deputy sheriffs and allowing them to work at the direction of defendant

Morris in depriving the plaintiffs and their minor children herein of their statutory and constitutional rights.

(5) Defendants Doris Wilker, Mary Tafs and Judy Dean are social workers employed by Scott County Human Services. In addition to the other actions alleged below they acted as the primary questioners and interrogators of the minor plaintiffs and in this capacity subjected them to coercive and cruel questioning techniques and also as a result of their failure to attempt to corroborate statements by the Buchans' children which exculpated their parents.

(6) Defendants Diane Johnson and John Manahan are the court appointed guardians ad litem for the Buchans' children. Defendants Johnson and Manahan, in addition to the other acts alleged herein, also engaged in a pattern of activity which was coercive and abusive to the minors placed under their direction by the Court in violation of their legal duties, in that they also interrogated the Buchans' children in an attempt to elicit additional accusatory responses from them as well as permitting defendant Morris and defendants Wilker, Tafs and Dean to question and interrogate the children under circumstances where it was apparent that their emotional and psychological well-being was threatened. Defendants Johnson and Manahan permitted and participated in the isolation and confinement of the Buchans' children in an attempt to coerce them into making responses which would be favorable for the State's case against their parents.

(7) Defendant Thomas Price practices in an association known as Phipps-Yonas & Price. In addition to the other actions alleged herein, defendant Price served defendant R. Kathleen Morris by providing her with psychological evaluations of the Buchans' children. In addition to providing these evaluations, defendant Price interrogated the Buchans' children and manipulated them psychologically and transmitted the confirmation of allegations to defendant R. Kathleen Morris in negligent disregard of the truth of these confirmations. Furthermore, defendant Price held himself out as a "psychotherapist" but was really practicing psychology, which requires a license, when in fact Mr. Price held no licensure of certification by the State, a misdemeanor within the ambit of M.S.A. § 148.97.

(8) Defendant Susan DeVries is a licensed psychologist who performed psychological consulting services for Scott County on a contract basis and as such, was acting under color of State law.

(9) Defendant Michael Shea is a licensed psychologist who practices with Shea & Associates, P.A., providing consulting services for Scott County on a contract basis and, as such, was acting under color of State law.

(8.1) On or about June 4, 1984, the defendants Scott County, Scott County Welfare Department, Peg Subby, Doris Wilker, Mary Tafs, Judy Dean, Thomas Price, Susan DeVries, Michael Shea, Douglas Tietz and R. Kathleen Morris caused, through their agents and under color of law, the forcible removal of the plaintiffs' three minor children from the plaintiffs' home.

(8.2) Defendants conspired to deprive the minor children herein of their rights under M.S.A. § 13.40, subd. 2, the so-called "Tennessen warning," which is binding upon all social workers but not police.

(8.31) Defendants further conspired to violate M.S.A. § 626.556, specifically including but not limited to subd. 10.

(8.32) Defendants further conspired to violate M.S.A. § 260.165.

(8.4) Defendants conspired to violate Minnesota Department of Public Welfare Regulations set forth in 12 M.C.A.R. § 2.207, insofar as there was no attempt to place the children voluntarily or seek alternatives to ensure the safety of the children, there was no attempt to contact the family, nor were other legally necessary prerequisite steps taken prior to petitioning a court for authorization to intervene.

(9) Defendant Morris then filed a criminal complaint against plaintiffs Donald Buchan and Cindy Buchan in Scott County District Court, alleging numerous instances and counts of sexual abuse committed by them upon their own children and upon other minor children.

(10) Defendant R. Kathleen Morris has, in the prosecution of criminal charges against the plaintiff, violated the laws and Constitution of the United States, the State of Minnesota and the Canons of Ethics governing the practice of law in her prosecution of the plaintiffs.

(15) Specifically, R. Kathleen Morris has:

(15.1) Destroyed material evidence in the form of audio and video tapes of interviews with alleged child victims, rather than disclose this potentially exculpatory material to defense counsel;

(15.2) Hid, covered up and withheld exculpatory evidence gathered at the State's direction by police and investigatory personnel;

(15.3) Threatened child witnesses who were potentially State's witnesses with jail, other punitive incarceration, and with threats that they would not see their parents again unless those witnesses gave testimony incriminating the accused adults; and

(15.4) Interrogated child witnesses using severely coercive methods which resulted in psychological disorders and traumas to these witnesses;

(15.5) Intimidated and accused child witnesses of lying if they did not deliver incriminating testimony and lied to child witnesses by telling them that their siblings had already made incriminating statements about their parents;

(15.6) Encouraged child witnesses through role playing to collectively vent accusations;

(15.7) Offered bribes, in an effort to obtain prosecution witnesses;

(15.8) Suborned perjury of a major prosecution witness in exchange for plea bargaining concessions;

(15.9) Entered into an illegal plea bargain which was contingent upon an after the fact evaluation of the usefulness of the convict's testimony to the prosecution;

(15.10) Misrepresented the nature of the plea bargain entered into with convicted child molester, James Rud to victims of his acts;

(15.11) Misrepresented the interrogation of child witnesses by a social worker as interrogation by a psychotherapist when in fact that person was unlicensed as a psychotherapist; and

(15.12) Represented to the trial court and defense counsel that Family Court appointees, foster parents, guardians ad litem, and social workers were not engaged in collecting information for the prosecution.

(16) These actions by defendant R. Kathleen Morris alleged in

this Complaint she took while acting in her capacity and office as an elected official and agent for Scott County. These actions went beyond her official capacity as prosecutor insofar as she acted as an investigator.

(17) All of the actions alleged herein represent the official deliberate policy or custom of the office of Scott County Attorney and the Scott County Board.

(18) The aforesaid arrests, confinement, separation of the family and interference with the family relation were made under color of the statutes, ordinances, regulations, customs and usages of the State of Minnesota and deprived plaintiffs of their rights, privileges and immunities under the United States Constitution and laws, specifically including but not limited to United States Constitution Article XIV, Section 1, in that plaintiffs have been deprived of their liberty without due process of law; United States Constitution Article IV, in that plaintiffs have been denied their right to be secure in their persons and home and from having their persons seized without warrant issued upon probable cause, supported by oath or affirmation; and United States Code, Title 42, Section 1983, in that plaintiffs have been deprived of their rights, privileges and immunities secured by the United States Constitution and laws by defendants acting upon color of Minnesota statutes, ordinances, regulations, customs and usage.

(19) The aforesaid actions by defendants were acts in furtherance of a conspiracy. Defendants and specifically R. Kathleen Morris and her office were engaged in a publicity campaign against child abuse and incest. Part of this campaign involved the invention by defendant Morris and others of a "sex ring" in Jordan, Minnesota. Defendants attempted to legitimize this invented "sex ring" by producing a large number of arrests and prosecutions in Jordan for sexual abuse of children. Defendants thus in furtherance of this conspiracy recklessly sought out plaintiffs as candidates for prosecution. These arrests were thus made without making any adequate substantiated inquiries regarding the welfare of the plaintiffs' minor children and without probable cause and in willful disregard of plaintiffs' rights, privileges and immunities secured by the United States Constitution and the law and Constitution of the State of

Minnesota.

(20) The defendants by failing to make reasonable inquiries before removing the Buchans' children from the family home and by initiating a criminal prosecution against Donald Buchan and Cindy Buchan without probable cause, in addition to being guilty of conspiracy as described in the preceding paragraph, were grossly negligent. As a result of this gross negligence, and of the other acts and omissions of the other defendants herein as previously alleged, plaintiffs have been greatly damaged, in that they have suffered great mental duress and anguish, have been wrongfully arrested and deprived of their liberty, wrongfully confined, have been caused to suffer damage to their family relations, have suffered alienation of affection between parent and child, have suffered injury to their reputations and have been greatly damaged in their enjoyment of their home and community and currently live in a state of fear of reprisal and other unwarranted governmental action by all of the aforesaid defendants and other officials of Scott County.

(21) As a further result of their gross negligence the minor plaintiffs Courtney, Melissa and William Buchan have been caused to suffer emotional and psychological harm which has and will continue to damage their maturation, growth and development.

(22) All of the aforesaid acts, restraints, interferences, arrests and imprisonments were committed with a willful indifference to the rights of plaintiffs so as to subject defendants and each of them to punitive damages pursuant to the provisions of the statutes and common law of the United States of America.

(23) Because of the matters set forth in all of the preceding paragraphs hereof, plaintiffs have been forced to retain an attorney to seek vindications of their rights and to assure them of the further peaceful enjoyment of their rights as residents of their community and the State of Minnesota and the United Sates.

WHEREFORE, plaintiffs demand judgment of defendants and each of them, as follows:

(1) For an award of compensatory damages in the amount of Fifteen Million Dollars ($15,000,000.00).

(2) For punitive damages in an amount sufficient to deter

defendants and other similarly situated, from committing such acts as are alleged in this complaint in the future, in an amount of Ten Million Dollars ($10,000,000.00)

(3) For plaintiffs' attorney's fees in connection with this action.

(4) For temporary and permanent injunction enjoining defendants and each of them, and all other officials of Scott County from taking any actions in reprisal for plaintiffs' having instituted this action or for any other reason.

(5) For such other relief as the Court may deem just or equitable.

/S/Marc G. Kurzman

Marc G. Kurzman
Carol Grant
KURSMAN, MANAHAN & PARTRIDGE
601 Butler Square
100 North Sixth Street
Minneapolis, Minnesota 55403
(612) 333-4403

Attorney for Plaintiffs

Dated: 11/19/84

IN THE

United States District Court

DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil File No._____

Charles Lallak and Carol Lallak, husband and wife; and Jeffrey Lallak and Jennifer Lallak, minors, by Charles Lallak and Carol Lallak, their parents and natural guardians,

Plaintiffs,

vs.

Scott County; Scott County Board of Commissioners; Scott County Attorney's Office; R. Kathleen Morris, Scott County Attorney; Scott County Sheriff's Department; Douglas Tietz, Scott County Sheriff; Michael M. Bush, Scott County Deputy Sheriff; Patrick Morgan, Scott County Deputy Sheriff; David Einertson, Scott County Deputy Sheriff; Norman Pint, Scott County Deputy

COMPLAINT

JURY TRIAL DEMANDED

Sheriff; Other employees of Scott County Sheriff's Department whose names and titles are unknown; Scott County Human Services Department; Rachel Paff, Social Worker with Scott County Human Services Department; Other employees of Scott County Human Services Department whose names and titles are unknown; City of Jordan; Jordan City Council; Gail Anderson, former mayor of Jordan; Donald Tillman, Mayor of Jordan; Jordan Police Department; Alvin Erickson, Jordan Police Chief; Larry Norling, Officer with Jordan Police Department; Other employees of Jordan Police Department whose names and titles are unknown; Thomas L. Price, and Phipps-Yonas & Price, P.A.,

Defendants.

Plaintiffs, as for their Complaint, state and allege as follows:

1. At all times material hereto Plaintiffs were residents of Scott County, Minnesota.

2. Upon information and belief, all of the Defendants named herein are residents of Scott County, Minnesota.

3. Jurisdiction in this case is based upon Section 1331 of Title 28 of the United States Code. Federal question jurisdiction is based upon Section 1983 of Title 42 of the United States Code. As further enumerated below, Plaintiffs are persons within the

jurisdiction of the United States District Courts who have been deprived of their rights, privileges and immunities secured under the laws and Constitution of the United States.

4. Plaintiffs Charles Lallak and Carol Lallak are husband and wife. Plaintiffs Jeffrey Lallak and Jennifer Lallak are their minor children, born respectively August 27, 1969 (15 years old) and October 26, 1970 (14 years old).

5. Defendant Scott County is, and at all times material hereto was, an entity duly organized and existing under and by virtue of Minnesota law.

6. Defendant Board of Commissioners is, and at all times material hereto was, a governmental body of Scott County.

7. Defendants County Attorney's office, Sheriff's Department and Human Services Department are, and at all times material hereto were, agencies of Scott County.

8. Defendant R. Kathleen Morris is, and at all times material hereto was, the County Attorney and chief legal officer and agent of Scott County.

9. Defendant Douglas Tietz is, and at all times material hereto was, the Sheriff and agent of Scott County.

10. Upon information and belief, Defendants Michael M. Bush, Patrick Morgan, David Einertson and Norman Pint are, and at all times material hereto were, Deputy Sheriffs and agents of Scott County.

11. Upon information and belief, Defendant Rachel Paff is, and at all times material hereto was, a Social Worker and agent of Scott County.

12. Defendant City of Jordan is, and at all times material hereto was, a municipal corporation organized under and pursuant to Minnesota Statute § 414.01, *et seq.*

13. Defendant City Council is, and at all times material hereto was, a governing body of the City of Jordan.

14. Defendant Police Department is, and at all times material hereto was, an agency of the City of Jordan.

15. Defendant Gail Anderson was the Mayor of the City of Jordan until the summer of 1984.

16. Defendant Donald Tillman is the Mayor for the City of Jordan, having commenced his term of office in the summer of 1984.

17. Defendant Alvin Erickson is, and at all times material hereto was, the Chief Police Officer and agent of the City of Jordan.

18. Defendant Larry Norling is, and at all times material hereto was, a police officer and agent of the City of Jordan.

19. Defendant Thomas L. Price practices in an association known as Phipps-Yonas & Price, P.A. At all times material hereto, Defendant Price held himself out as a "psychotherapist" but was really practicing psychology, which requires a license, when in fact Defendant Price held no license or certification by the State. Furthermore, Defendant Price assisted Defendant Morris and the other Defendants by providing her with psychological evaluation of various children allegedly abused by the Lallaks.

20. Beginning in February of 1984, Defendants and their agents wrongfully, unlawfully and in derogation of Plaintiffs' constitutional rights, began interrogating Plaintiffs about alleged child sex abuse and incest. Said interrogations occurred repeatedly until May 23, 1984.

21. On or about May 23, 1984, Defendants, and specifically R. Kathleen Morris, wrongfully, unlawfully and in derogation of Plaintiffs' constitutional rights filed a criminal complaint alleging six counts of criminal sexual conduct. Based upon said criminal complaint, Defendants wrongfully, unlawfully and in derogation of Plaintiffs' constitutional rights imprisoned Charles and Carol Lallak and, furthermore, forebode the Lallak parents from contacting the Lallak children.

22. In the investigation and prosecution of the criminal charges against the Lallaks, Defendants, and specifically R. Kathleen Morris acted in a reckless and grossly negligent manner.

23. In addition to actions taken in the capacity of chief prosecutor for and agent of Scott County, Defendant R. Kathleen Morris also took actions which exceeded her official capacity and further acted in the capacity of administrator and investigator.

24. In addition to actions taken in their capacity as agents for Scott County, Defendants Douglas Tietz, Michael M. Bush, Patrick Morgan, David Einertson and Norman Pint exceeded

the scope of their agency; all of said actions were wrongful, unlawful and in derogation of Plaintiffs' constitutional rights.

25. In addition to actions taken in their capacity as agents for the City of Jordan, Defendants Alvin Erickson and Larry Norling exceeded the scope of their agency; all of said actions were wrongful, unlawful and in derogation of Plaintiffs' constitutional rights.

26. In pertinent part, all of the actions alleged herein represent the official deliberate policy, or were taken pursuant to the guidelines of, Scott County, the Scott County Board of Commissioners, the Scott County Sheriff's Department, the Scott County Welfare Department, the City of Jordan, Jordan City Council and the Jordan Police Department.

FIRST CAUSE OF ACTION

27. Realleges and incorporates by reference Paragraphs 1 through 26 herein.

28. The aforesaid arrests, confinement, separation of the family and interference with the family relation were made under color of the statutes, ordinances, regulations, customs and usages of the State of Minnesota and deprived Plaintiffs of their rights, privileges and immunities under the United States Constitution and laws. Without limitation, Defendants' conduct has been violative of Plaintiffs' rights as enumerated in the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution and Section 1983 of Title 42 of the United States Code.

29. The aforesaid actions by Defendants were acts in furtherance of a conspiracy. Defendants, and specifically R. Kathleen Morris and her office, were engaged in a publicity campaign against child abuse and incest. Part of this campaign involved the invention by Defendant Morris and others of a "sex ring" in Jordan, Minnesota. Defendants attempted to legitimize this invented "sex ring" by producing a large number of arrests and prosecutions in Jordan for sexual abuse of children. In furtherance of this conspiracy, Defendants recklessly sought out the Lallaks as candidates for prosecution. These arrests were thus made without making any adequate

substantiated inquiries regarding the welfare of the Plaintiffs' minor children and without probable cause and in willful disregard of Plaintiffs' rights, privileges and immunitites secured by the United States constitution and the law and Constitution of the State of Minnesota.

30. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

31. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

SECOND CAUSE OF ACTION

32. Realleges and incorporates by reference Paragraphs 1 through 31 herein.

33. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted a malicious prosecution of the Lallaks.

34. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

35. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

THIRD CAUSE OF ACTION

36. Realleges and incorporates by reference Paragraphs 1

through 35 herein.

37. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted an abuse of process as to the Lallaks.

38. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

39. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

FOURTH CAUSE OF ACTION

40. Realleges and incorporates by reference Paragraphs 1 through 39 herein.

41. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted a false imprisonment of the Lallaks.

42. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

43. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

FIFTH CAUSE OF ACTION

44. Realleges and incorporates by reference Paragraphs 1 through 43 herein.

45. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted libel as to the Lallaks.

46. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

47. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

SIXTH CAUSE OF ACTION

48. Realleges and incorporates by reference Paragraphs 1 through 47 herein.

49. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted slander as to the Lallaks.

50. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of repuation, damages to their family relations, and alienation of affection between parent and child.

51. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

SEVENTH CAUSE OF ACTION

52. Realleges and incorporates by reference Paragraphs 1 through 51 herein.

53. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted a tortious invasion of Plaintiffs' privacy.

54. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

55. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

EIGHTH CAUSE OF ACTION

56. Realleges and incorporates by reference Paragraphs 1 through 55 herein.

57. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted extreme and outrageous conduct which intentionally or recklessly caused severe emotional harm, said actions constituting an intentional infliction of emotional distress without economic or social justification.

58. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

59. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

NINTH CAUSE OF ACTION

60. Realleges and incorporates by reference Paragraphs 1 through 59 herein.

61. All of the aforesaid acts, restraints, interferences, arrests and imprisonments resulted directly and proximately from the

wrongful acts and omissions, gross negligence and breach of duties of the Defendants.

62. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

63. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

TENTH CAUSE OF ACTION

64. Realleges and incorporates by reference Paragraphs 1 through 63 herein.

65. Defendants Scott County, Scott County Board of Commissioners, Scott County Attorney's Office, Scott County Sheriff's Department, Scott County Welfare Department, City of Jordan, Jordan City Council, Jordan Mayor's office and Jordan Police Department failed to adequately supervise and train their respective agents.

66. As a direct and proximate result of the foregoing, Plaintiffs have suffered and will continue to suffer damages in the form of, without limitation, lost wages and benefits, medical expenses, mental anguish and suffering, loss of reputation, damages to their family relations, and alienation of affection between parent and child.

67. All of the aforesaid acts, restraints, interferences, arrests and imprisonments constituted willful indifference to the rights of Plaintiffs so as to subject Defendants, and each of them, to liability for punitive damages pursuant to the applicable statutes and common law.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants, and each of them, as follows:

1. For an award of compensatory damages in an amount in excess of Fifty Thousand Dollars ($50,000.00).

2. For an award of punitive damages in an amount in excess of Fifty Thousand Dollars ($50,000.00).

3. For a temporary and permanent injunction restraining and enjoining Defendants, and each of them, from taking any actions in reprisal for Plaintiffs having instituted this action or for any other reason.

4. For their costs, disbursements, attorneys's fees, and witness fees pursuant to the provisions of 42 U.S.C. § 1988 and other applicable laws.

5. For such other and further relief as the Court deems fair, just and equitable.

DATED: November 19, 1984.

HANLEY, HERGOTT & HUNZIKER

By /S/Thomas J. Hunziker
Thomas J. Hunziker

701 Fourth Avenue South, Suite 1400
Minneapolis, MN 55415
Telephone: (612) 338-6990

Attorneys for Plaintiffs Charles Lallak and Carol Lallak

and

DUNKLEY AND BENNETT, P.A.

By /S/Michael D. Madigan
Michael D. Madigan

701 Fourth Avenue South, Suite 1400
Minneapolis, MN 55415
Telephone: (612) 339-1290

Attorneys for Plaintiffs Jeffrey Lallak and Jennifer Lallak

IN THE

United States District Court

DISTRICT OF MINNESOTA
FOURTH DIVISION

Daniel J. Meger and Wanda Lou Meger, individually and as parents and natural guardians of Brian Meger and Chad Meger, minors,

Plaintiffs,

versus

Scott County, a Political Subdivision of the State of Minnesota; R. Kathleen Morris, individually and in her official capacity as attorney for Scott County; Scott County Board of Commissioners; Scott County Welfare Department and Margaret Subby, it's Director of Human Services; Scott County Sheriff's Department and it's Deputies, Patrick Morgan and Michael Busch; Doris Wilker, Social Worker, Scott County Welfare Department; Joel Kaufmann, psychologist, Scott County Welfare Department; Jane McNaught, and Center for Child and Family Therapy; B. A. Bershow, M.D., and Burnsville Family Physicians, P.A.; John Doe and Mary Doe and other employees of Scott County whose names and titles are unknown,

Defendants.

COMPLAINT

DEMAND FOR JURY TRIAL

PLAINTIFFS', for their Complaint herein, allege as follows:

JURISDICTIONAL STATEMENT

(1) This action arises under, and jurisdiction is based upon United States Code Title 42, Section 1983 and Section 1985. Plaintiffs are persons within the jurisdiction of the United States and have been deprived of their rights, privileges, and immunities secured under the Laws and Constitution of the United States. Defendants have injured the Plaintiffs causing them damages in excess of Ten Thousand and 00/100's ($10,000.00) Dollars, exclusive of interest and costs.

UNIVERSAL ALLEGATIONS

(2) Plaintiffs Daniel J. Meger and Wanda Lou Meger are residents of the City of Jordan, County of Scott, State of Minnesota. Plaintiffs are husband and wife, having been married on May 7, 1977. Plaintiffs have two minor children, namely: Brian Meger, born July 20, 1975, age 9; and Chad Meger, born September 16, 1978, age 6.

(3) Defendant R. Kathleen Morris is a Resident of the County of Scott, State of Minnesota, and is the chief legal officer and agent of Scott County.

(4) Defendant Scott County Board of Commissioners is the entity responsible for the political and legal actions of Scott County. All actions complained of hereinafter represent the official and negligent supervisory policies of the Scott County Board of Commissioners, and Scott County.

(5) Defendant Margaret Subby was at all times relevant herein the Director of Scott County Human Services and in that capacity failed to properly supervise employees under her direction and allowed said employees to deprive Plaintiffs of their civil and constitutional rights under color of State Law.

(6) Defendant Scott County Sheriff's Department failed to properly supervise its employees in that it impliedly relinquished control of Defendant Deputy Sheriffs' Pat Morgan and Michael Busch to R. Kathleen Morris, for the purpose of suborning

potential perjury by witnesses that were subject to Defendants coercion, and were particularily vulnerably by virtue of age and or mental infirmities.

(7) Defendant Doris Wilker and other social workers were employed by Scott County Human Services. In addition to other actions, further alleged below, Defendants acted as primary questioners and interrogators of the minor Plaintiffs and in this capacity subjected them to severe emotional and psychological trauma, and abuse resulting from their cruel and coercive questioning techniques.

(8) Defendant Joel Kaufman is and at all times relevant herein was a licensed psychologist employed by Scott County and in that capacity acted to further the conspiracy be serving to provide Defendant R. Kathleen Morris with psychological evaluations of minor Plaintiffs and in addition to providing these evaluations, Defendant Kaufman interrogated and manipulated the minor Plaintiffs psychologically and transmitted false and misleading allegations to Defendant R. Kathleen Morris.

(9) Defendant Jane McNaught is a licensed psychologist who practices with the Center for Child and Family Therapy providing consulting services for Scott County on a contract basis and in that capacity acted to further the conspiracy by serving to provide Defendants R. Kathleen Morris and Scott County Human Services with psychological evaluations and reports that were false and misleading and the product of her coercive and intimidating techniques of interrogation. Said evaluations and reports were provided by Defendant Jane McNaught while acting under color of State Law.

(10) Defendant B. A. Bershow, M.D., is a medical doctor who practices with Burnsville Family Physicians, P.A., providing medical examinations for Scott County on a contract basis and in such capacity provided Defendants R. Kathleen Morris and Scott County Human Services with evaluations and reports that were false and misleading. Said Defendant also interrogated the minor Plaintiffs herein in a manner that was coercive and manipulative so as to further the conspiracy alleged herein while acting under color of State Law.

(11) Defendants John Doe and Mary Doe and other

employees of Scott County whose names and titles are unknown, committed acts in furtherance of the deprivation to Plaintiffs due process and equal protection of law by their intentional and negligent action as alleged herein.

(12) On or about June 5, 1984, Defendants Scott County, Scott County Welfare Department, Margaret Subby, Doris Wilker, Joel Kaufman, Patrick Morgan, Michael Busch and R. Kathleen Morris, caused through their agents and under color of State Law, the removal of Plaintiffs two minor children from Plaintiffs home.

(13) Defendants R. Kathleen Morris, Doris Wilker and other employees of Scott County, conspired to coerce and intimidate Plaintiff Wanda Lou Meger by false and misleading representations under color of State Law to sign a document allowing for the voluntary placement of the minor Plaintiffs herein in foster care.

(13a) defendants failed to advise Plaintiff Wanda Lou Meger of her statutory right to have counsel available prior to signing the placement document.

(13b) Defendants willfully and deceitfully misrepresented to Plaintiff Wanda Lou Meger that her minor children would be returned to the family home within 72 hours.

(13c) Defendants willfully maligned and impugned the character of Plaintiff Daniel J. Meger, making allegations of physical and sexual abuse so as to coerce Plaintiff Wanda Lou Meger to sign the voluntary placement documents.

(13d) Defendants conspired to deprive the minor children herein of their rights under Minnesota Statutes Annotated Section 13.40, subd. 2, the so-called "Tennessen warning," which is binding upon all social workers but not police.

(13e) Defendants further conspired to violate Minnesota Statutes Annotated Section 626.556, specifically including, but not limiting to subd. 10.

(13f) Defendants further conspired to deprive Plaintiffs of their rights through their total abrogation of and failure to comply with the safeguards provided in Minnesota Statutes Annotated Section 260, et seq.

(14) Defendant R. Kathleen Morris with the knowledge and

consent of Scott County and other Defendants named herein, exercised power and authority not properly vested in her capacity as chief legal counsel and agent of Scott County further continuing the forced destruction of Plaintiff's family unit in the absence of any formal criminal charges.

(15) defendant has in the furtherance of the persecution of Plaintiffs, violated the Laws and the Constitution of the United States, the State of Minnesota and the Cannons of Ethics governing the practice of Law in her malicious persecution of the Plaintiffs.

(16) Specifically, Defendant R. Kathleen Morris has:

(16a) Caused Plaintiffs Daniel J. Meger and Wanda Lou Meger to have to endure the uncertainty and trauma of threatened criminal prosecution. Said threats being founded in malice and without probable cause thus perverting the prosecutorial function and duties.

(16b) Destroyed material evidence in the form of audio and video tapes of interviews with the minor Plaintiffs herein and with other alleged child victims, rather than disclose this potentially exculpatory mataerial to Plaintiffs counsel.

(16c) Hid, covered up and withheld exculpatory evidence gathered at the State's direction by police and investigatory personnel.

(16d) Threatened the minor Plaintiffs herein and other child witnesses who were potential State's witnesses with jail, other punitive incarceration, and with threats that they would not see their parents again unless they gave testimony incriminating the accused adults.

(16e) Interrogated the minor Plaintiffs herein and other child witnesses using severely coercive methods which resulted in psychological disorders and traumas to the minor Plaintiffs herein.

(16f) Intimidated and accused the minor Plaintiffs herein and other child witnesses of lying if they did not deliver incriminating testimony and lied to minor Plaintiffs herein and other child witnesses by telling them that their siblings had already made incriminating statements about their parents.

(16g) Encouraged minor Plaintiffs herein and other child

witnesses through role playing to collectively vent accusations.

(16h) Offered bribes, in an effort to obtain prosecution witnesses.

(16i) Suborned perjury of a major prosecution witness in exchange for plea bargaining concessions.

(16j) Represented to the Family Court and Plaintiffs counsel that Family Court appointees, foster parents, guardians ad litems, and social workers were not engaged in collecting information for the prosecution.

(16k) That Defendant R. Kathleen Morris did falsely, maliciously and wantonly impute to Plaintiffs Daniel J. Meger and Wanda Lou Meger by then and there in the presence and hearing of a third party, falsely, maliciously and wantonly saying of and concerning Plaintiffs that they were guilty of heinous sexual abuse of their minor children.

(16l) That Defendant R. Kathleen Morris further falsely, maliciously and wantonly caused said allegations of sexual abuse to be published in a medium available to the general public causing severe emotional distress to Plaintiffs Daniel J. Meger and Wanda Lou Meger and irreprably damaging their standing in the community.

(17) Further all of the actions alleged herein represent the official deliberate policy of the office of County Attorneys and the County Board.

(18) The aforesaid false imprisonment, confinement, separation of the family and interference with the family relation were made under color of the statutes, ordinances, regulations, customs and usages of the State of Minnesota and deprived Plaintiffs of their rights, privileges and immunities under the United States Constitution and laws, specifically including but not limited to United States Constitution Article XIV, Section q, in that Plaintiffs have been deprived of their liberty without due process of law; United States Constitution Article IV, in that Plaintiffs have been denied their right to be secure in their persons and home and from having their persons seized without warrant issued upon probable cause, supported by oath or affirmation; and United States Code, Title 92, Section 1983, in that Plaintiffs have been deprived of their rights, privileges and im-

munities secured by the United States Constitution and laws by Defendants acting upon color of Minnesota statutes, ordinances, regulations, customs and usage.

(19) The aforesaid actions by Defendants were acts in furtherance of a conspiracy. Defendants and specifically R. Kathleen Morris and her officers and agents were engaged in a publicity campaign against child abuse and incest. Part of this campaign involved the invention by Defendant Morris and others of a "sex ring" in Jordan for sexual abuse of children. Defendants thus in furtherance of this conspiracy recklessly sought out Plaintiffs as candidates for prosecution. These threats of prosecution were thus made without making any adequate substantiated inquiries regarding the welfare of the Plaintiffs minor children and without probable cause and in willful disregard of Plaintiffs rights, privileges and immunities secured by the United States Constitution and the Law and Constitution of the State of Minnesota.

(20) The Defendants, by failing to make reasonable inquiries before removing the minor Plaintiffs herein from the home and by inducing Plaintiff Wanda Lou Meger to sign a voluntary placement document under the spector of threatened criminal prosecution, in addition to being guilty of conspiracy were grossly negligent. As a result of this gross negligence, and of other acts and omissions of the other Defendants herein as previously alleged, Plaintiffs have been greatly damaged, in that they have suffered great mental duress and anguish, have been caused to suffer damage to their family relations, have suffered alienation of affection between parent and child, have suffered injury to their reputations and have been greatly damaged in their enjoyment of their home and community and currently live in a state of fear of reprisal and other unwarranted governmental action by all of the aforesaid Defendants and other officials of Scott County.

(21) As a further result of their gross negligence the minor Plaintiffs have been falsely imprisoned and caused to suffer emotional and psychological harm which has and will continue to damage their maturation, growth and development.

(22) All of the aforesaid acts, restraints, interferences and

false imprisonments were committed with a willful indifference to the rights of Plaintiffs so as to subject Defendants and each of them to punitive damages pursuant to the provisions of the statutes and common law of the United States of America.

(23) Because of the matters set forth in all of the preceding paragraphs hereof, Plaintiffs have been forced to retain an attorney to seek vindication of their rights and to assure them of the further peaceful enjoyment of their rights as residents of their community and the State of Minnesota and the United States.

WHEREFORE, Plaintiffs demand Judgment of Defendants and each of them, as follows:

1. For an award of compensatory damages in the amount of Seven Million Five Hundred Thousand and 00/100's ($7,500,000.00) Dollars.

2. For punitive damages in an amount sufficient to deter Defendants and others similarly situated, from committing such acts as are alleged in this Complaint in the future, in an amount of Fifteen Million and 00/100's ($15.000,000.00) Dollars.

3. For temporary and permanent injunction enjoining Defendants and each of them, and all other officials of Scott County from taking any actions in reprisal for Plaintiffs having instituted this action or for any other reason.

4. For such other and further relif as to the Court may deem just and equitable.

MURPHY, BLANCHAR &
ELLIOTT

/S/Patrick H. Elliott

Patrick H. Elliott
Attorney I.D. No. 134661
Attorney for Plaintiffs
7407 Wayzata Boulevard
Minneapolis, MN 55426-1675
(612) 546-4472

Dated: Jan. 22, 1985

ANTHONY L. NOTERMAN, ESQ.

/S/Anthony L. Noterman

Anthony L. Noterman
Attorney I.D. No. 79984
Attorney for Plaintiffs
P.O. Box 158
Shakopee, MN 55379
(612) 445-3844

Dated: Jan. 22, 1985

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 85-5243

Greg Myers, etc., et al.,
Appellees,
v.
R. Kathleen Morris, Scott County Attorney,
Appellant.

* * * * *

Duane Rank, et al.,
Appellees,
v.
R. Kathleen Morris, Scott County Attorney,
Appellant.

* * * * *

Charles Lallak, etc., et al.,
Appellees,
v.
R. Kathleen Morris, Scott County Attorney,
Appellant.

* * * * *

Appeals from the United States District Court for the District of Minnesota.

Donald Buchan, etc., et al.,
Appellees,
v.
R. Kathleen Morris, Scott
County Attorney,
Appellant.

* * * * *

Daniel J. Meger, etc., et al.,
Appellees,
v.
R. Kathleen Morris, Scott
County Attorney,
Appellant.

* * * * *

Robert Bentz, etc., et al.,
Appellees,
v.
R. Kathleen Morris, Scott
County Attorney,
Appellant.

* * * * *

Thomas Brown, et al.,
Appellees,
v.
R. Kathleen Morris, Scott
County Attorney
Appellant.

* * * * *

George B. Gould,
Appellee,
v.
R. Kathleen Morris, Scott County Attorney,
Appellant.

No. 85-5244

Greg Myers, etc., et al.,
Appellees,
v.
Norm Pint, et al.,
Appellants.

* * * * *

Charles Lallak, etc., et al.,
Appellees,
v.
Michael M. Busch, et al.,
Appellants.

* * * * *

Donald Buchan, etc., et al.,
Appellees,
v.
Norm Pint, et al.,
Appellants.

* * * * *

Daniel J. Meger, etc., et al.,
Appellees,
v.
Patrick Morgan, et al.,
Appellants.

* * * * *

Robert Bentz, etc., et al.,
Appellees,
v.
Michael Busch, et al.,
Appellants.

No. 85-5253

Donald Buchan, Cindy Buchan, individually and as parents and natural guardians of Courtney B. Buchan, Melissa Ellen Buchan, and William Donald Buchan, minors,
Appellees,
v.
Scott County, R. Kathleen Morris, Scott County Attorney, Scott County Human Services, Peg Subby, its Director of Human Services, Thomas Price, Phipps, Yonas & Price, P.A., Michael Shea, Shea and Associates, Doris Wilker, Social Worker, Mary Tafs, Social Worker, Judy Dean, Social Worker, Susan DeVries, Psychologist,
Appellants,
and other Employees of Scott County Human Services whose names and titles are unknown, and Douglas Tietz, Scott County Sheriff, and

Deputy Sheriffs Norm Pint, Patrick Morgan, and Michael Busch.

No. 85-5257

Robert Bentz and Lois Bentz, individually and as parents and natural guardians of Marlin Bentz, William Bentz and Anthony Bentz, minors,
Appellants,

v.

Scott County, R. Kathleen Morris, Scott County Attorney; Margaret Subby, Scott County Welfare Department/Director of Human Services; Doris Wilker, Social Worker, Scott County Welfare Department; Michael Busch, Patrick Morgan and Norman Pint, Scott County Deputy Sheriffs;
Michael Shea, Leslie Faricy,
Appellees,
Michael Shea and Associates; Earl Barrett; Cindy Christ; and John Doe and Mary Roe; and other employees of Scott County Human Services whose names and titles are unknown.

No. 85-5261

Greg Myers and Jane Myers, et al.,
Appellees,
v.
Douglas Tietz, Scott County Sheriff,
Appellant.

* * * * *

Charles Lallak and Carol Lallak, et al.,
Appellees,
v.
Douglas Tietz, Scott County Sheriff,
Appellant.

* * * * *

Donald Buchan, Cindy Buchan, et al.,
Appellees,
v.
Douglas Tietz, Scott County Sheriff,
Appellant.

No. 85-5336

Robert Bentz, Lois Bentz, individually and as parents and natural guardians of Marlin Bentz, William Bentz and

Anthony Bentz,
Appellants,
v.
Scott County, R. Kathleen Morris, Margaret Subby, Doris Wilker, Paul Thomsen, Guardian Ad Litem,
Appellees,
Michael Busch, Patrick Morgan, Norman Pint, Earl Barrett, Cindy Crist, John Doe, Mary Roe.

No. 85-5408

Donald Buchan, Cindy Buchan, individually and as parents and natural guardians of Courtney B. Buchan, Melissa Ellen Buchan and William Donald Buchan, minors,
Appellants,
v.
Scott County, R. Kathleen Morris, Scott County Attorney; Scott County Human Services, Peg Subby, its Director of Human Services; Thomas Price, Phipps, Yonas & Price, P.A.,
Appellees,,
Michael Shea, Shea and Associates, Doris Wilker, Social Worker; Mary Tafs, Social Worker; Judy Dean, Social Worker; Susan

DeVries, Psychologist; other employees of Scott Human Services whose names and titles are unknown, Douglas Tietz, Sheriff of Scott County.

No. 85-5409

Greg Myers and Jane Myers, individually and as parents and natural guardians of Andy Myers, Amy Myers and Brian Myers, minors,
Appellants,
v.
Scott County and R. Kathleen Morris, Scott County Attorney; Scott County Human Services and Peg Subby, its Director of Human Services; Thomas Price, and Phipps, Yonas Price, P.A.,
Appellees,
Paul Thomsen, Guardian Ad Litem; Doris Wilker, Social Worker; and other Employees of Scott County Human Services whose names and titles are unknown; and DOuglas Tietz, Scott County Sheriff; Deputy Sheriffs Norm Pint, Patrick Morgan and Michael Busch and City County of Jordan Minnesota, and Alvin Erickson, Jordan Chief of Police.

No. 85-5412

Charles Lallak and Carol Lallak, husband and wife; and Jeffrey Lallak and Jennifer Lallak, minors, by Charles Lallak and Carol Lallak, their parents and natural guardians,

Appellants,

v.

Scott County; Scott County Board of Commissioners; Scott County Attorney's Office; R. Kathleen Morris, Scott County Attorney; Scott County Sheriff's Department, Douglas Tietz, Scott County Sheriff; Michael M. Busch, Scott County Deputy Sheriff, Patrick Morgan, Scott County Deputy Sheriff; David Einertson, Scott County Deputy Sheriff; Norman Pint, Scott County Deputy Sheriff; Other employees of Scott County Sheriff's Department whose names and titles are unknown; Scott County Human Services Department; Rachel Paff, Social Worker with Scott County Human Services Department; Other employees of Scott County Human Services Department whose names and titles are unknown;

Larry Norring, Officer with
Jordan Police Department,
Thomas L. Price, and
Phipps-Yonas & Price, P.A.,
Appellees.

No. 85-5007

Greg Myers and Jane Myers,
individiually and as parents
and natural guardians of An-
dy Myers, Amy Myers and
Brian Myers, minors,
Appellants,

v.

Scott County and R.
Kathleen Morris, Scott Coun-
ty Attorney; Scott County
Human Services and Peg
Subby, its Director of
Human Services; Thomas
Price, and Phipps-Yonas &
Price, P.A.,
Paul Thomsen, Guardian Ad
Litem,
Appellee,
Doris Wilker, Social Worker,
and other employees of Scott
County Human Services
whose names and titles are
unknown; and Douglas Tietz,
Scott County Sheriff, Deputy
Sheriffs Norm Pint, Patrick
Morgan and Michael Busch,
and City County of Jordan,
Minnesota and Alvin
Erickson, Jordan Chief of
Police. Appellants,

No. 86-5008

Donald Buchan, Cindy Buchan, individually and as parents and natural guardians of Courtney B. Buchan, Melissa Ellen Buchan and William Donald Buchan, minors,

Appellants,

v.

Scott County, R. Kathleen Morris, Scott County Attorney; Scott County Human Services, Peg Subby, its Director of Human Services; Thomas Price, Phipps, Yonas & Price, P.A. Michael Shea, Shea and Associates, Diane Johnson, Guardian ad Litem, John Manahan, Guardian ad Litem,

Appellees,

Doris Wilker, Social Worker; Mary Tafs, Social Worker; Judy Dean, Social Worker; Susan DeVries, Psychologist; other employees of Scott County Human Services whose names and titles are unknown, Douglas Tietz, Sheriff of Scott County.

No. 86-5076

Coralene Rawson, individually and as a parent and

natural guardian of Sarah Rawson,

Appellant,

v.

Scott County; R. Kathleen Morris, Scott County Attorney; Scott County Human Services and Peg Subby, Director of Scott County Human Services; Diane Johnson, Guardian ad Litem of Sarah Rawson; John Manahan; Guardian ad Litem of Sarah Rawson,

Appellees,

Doris Wilker, Social Worker for Scott County Human Services; Karen Kandig, Social Worker for Scott County Human Services, Douglas Tietz, Scott County Sheriff, Michael Busch, Scott County Deputy Sheriff, Hubert H. Humphrey III, as Minnesota Attorney General and individually, Norman Coleman, as Assistant Minnesota Attorney General and individually, Michael Jordan, as Attorney General and individually; Charles Balck, as Assistant Ramsey County Attorney, and Individually, Wright Walling, Attorney for Sarah Rawson and Diane Johnson, guardians ad Litem,

Appellee.

Submitted: May 13, 1986
Filed: February 3, 1987

Before ROSS, Circuit Judge, FLOYD R. GIBBON, Senior Circuit Judge, and ARNOLD, Circuit Judge.

ROSS, Circuit Judge.

Before us are the consolidated appeals in eight civil rights lawsuits which grew out of a child sexual abuse investigation in Jordan, Minnesota, during 1983-84. Thirteen of the fifteen plaintiffs in these cases were charged by Scott County Attorney, R. Kathleen Morris, with criminal sexual activity involving one or more minor children.

The investigation began in September 1983 with the arrest of James Rud, a person who later entered a plea of guilty to multiple counts of child sexual abuse. Thirteen of the plaintiffs in these cases were arrested and charged between January 11, 1984, and June 4, 1984. Where minor children were residing in the home, they were removed on temporary police holds after a parent's arrest and subsequently placed in foster care. The two plaintiffs who were never charged nevertheless lost temporary custody of their children.

One criminal case involving two of the plaintiffs in these appeals went to trial, and the County lost. Upon the acquittal of these plaintiffs, the advice of therapists and guardians that testifying at additional trials would be against the best interests of the juvenile witnesses and the development of an investigation into alleged homicides, the county attorney dismissed all pending charges against the plaintiffs and others. The plaintiffs then filed these civil rights lawsuits against Morris and various other defendants.

Appealable Orders

The appeals are from a decision by the district court[1] to deny

[1] *In re Scott County Master Docket*, 618 F.Supp. 1534 (D. Minn. 1985), the Honorable Harry H. MacLaughlin, United States District Judge for the District of Minnesota.

certain motions for summary judgment and to grant others. All of the defendants, including many who are not before us in these appeals, moved for summary judgment in the district court on the basis of absolute and qualified immunity from suit and other grounds. The district court denied the motions submitted by (1) Scott County Attorney R. Kathleen Morris; (2) Scott County Sheriff Douglas Tietz; (3) four of the sheriff's deputies, Michael Busch, Patrick Morgan, Norm Pint and David Einertson, and (4) a therapist, Susan DeVries. The district court entered summary judgment in favor of (1) Jordan police officer Larry Norring; (2) guardians ad litem Diane Johnson, John Manahan and Paul Thomsen; (3) therapists Thomas Price and Phipps-Yonas & Price, P.A., Michael Shea, Leslie Faricy and Shea & Associates, P.A., and (4) a court-appointed attorney, Wright Walling.

The orders entering summary judgment in favor of the police officer, guardians ad litem, certain therapists and a court- appointed attorney were certified for review under FED. R. CIV. P. 54(b). The appeals by the prosecutor, sheriff, sheriff's deputies and a therapist contesting the denial of their motions for summary judgment are appealable on the basis of the limited exception created in *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2815, 2816 (1985), for denials of motions for summary judgment asserting immunity defenses. *See Wright v. South Arkansas Regional Health Center, Inc.*, 800 F.2d 199, 202-03 (8th Cir. 1986); *White v. Pierce County*, 797 F.2d 812, 814 (9th Cir. 1986).

The Plaintiffs

The plaintiffs in these cases came to the attention of law enforcement personnel in the following sequence of events. On September 26, 1983, Chris Brown[2] reported to Larry Norring of the Jordan, Minnesota police department that James Rud, a resident of the Valley Green trailer park in Jordan, Minnesota, had been sexually

---

[2]Christine Brown is not a party to these appeals.

abusing her daughter, S. Krahl. Then Judy Kath[3] made a complaint concerning Rud's abuse of her daughter, V. Kath. Norring performed a warrantless arrest of Rud on September 26, 1983. Criminal charges were soon brought, and as the investigation continued, additional criminal complaints were filed against Rud, ultimately totalling 108 counts of sexual abuse involving many children. He eventually entered a guilty plea and is serving a term of imprisonment.

After Rud had been arrested and charged and child victims were being questioned, other child victims of Rud were identified and acts of sexual abuse by other adults were described. The magnitude of the job of questioning Rud victims soon exceeded the capacity of the small Jordan police department. By October 1, 1983, Jordan police chief Alvin Erickson requested investigative assistance from the Minnesota Bureau of Criminal Apprehension (BCA).

Norring and three BCA officers interviewed children until in early November 1983, the Scott County sheriff's department entered the investigation and the BCA withdrew. Norring was assigned to assist in the investigation, and he maintained investigative contact with S. Krahl and her brother, J. Krahl, and V. Kath (all Rud victims). By the end of November 1983, eight persons had been formally charged including Chris Brown, Judy Kath and Robert Rawson. (Robert Rawson was implicated by two Rud victims as a person who had sexually abused them.)[4]

In interviews with Larry Norring on January 10 and 11, 1984, S. Krahl, J. Krahl and V. Kath described acts of sexual abuse by plaintiffs Tom and Helen Brown. Investigation by law enforcement personnel into James Rud charges was still in progress as of this date. Deputy sheriff Michael Busch swore out criminal complaints incorporating Norring's report of these interviews, on the basis of which Busch obtained arrest warrants. Tom and Helen Brown were arrested on January 11, 1984, by Norring, Busch and deputy sheriff

---

[3]Judy Kath is not a party to these appeals.

[4]Robert Rawson is not a party to these appeals.

Patrick Morgan. Two minor children, J. Brown and B. Brown, were removed from the home on January 11, 1984.

In interviews with detectives Busch and Morgan on January 12, 13, and 20, 1984, S. Krahl and J. Brown described acts of abuse by plaintiffs Robert and Lois Bentz. Morgan swore out criminal complaints on the basis of these statements and obtained arrest warrants. Robert and Lois Bentz were arrested on January 20, 1984, and their three minor children were removed from the home on that date. The Bentz children were not questioned until after their parents had been arrested.[5]

Another Rud victim, K. Fossen, implicated plaintiff Greg Myers as did J. Brown and B. Brown. These children described acts of abuse by Myers during interviews on February 6, 1984, with detectives Busch and Morgan. Busch and Morgan performed a warrantless arrest of Greg Myers on February 6, 1984, and deputy sheriffs Norm Pint and David Menden were assigned by deputy sheriff David Einertson to remove three minor children from the Myers' home. Busch swore out a criminal complaint against Greg Myers on February 8, 1984. The two older Myers children were not questioned until after Greg Myers' arrest. The youngest, aged two, was not questioned.

By March 1984, V. Kath (one of the two Rud victims who had previously described sexual abuse upon themselves by Robert Rawson) also stated that Robert Rawson had been abusing his daughter S. Rawson. On March 22, 1984, detectives Busch and Morgan removed S. Rawson from her home over the protests of her mother, plaintiff Coralene Rawson. Within four days a neglect petition was filed based upon statements by S. Rawson to the sheriff's deputies after she had been removed from her home. On March 31, 1984,

---

[5]Additional charges were brought against Robert and Lois Bentz on July 23, 1984, based on interviews with the Bentz children, J. Brown and two victims of James Rud (S. Krahl and K. Fossen). Deputy sheriff Norman Pint was the complaining witness, and the criminal complaint incorporated statements by the children concerning games of nude hide and seek, sodomy, oral sex and sexual acts involving a cat in which they had been forced by Robert and Lois Bentz to participate.

plaintiff Coralene Rawson was arrested and charged with sexually abusing S. Rawson.

In interviews with detectives Busch and Pint on May 5, 15, and 22, 1984, the two older Myers children implicated plaintiff Jane Myers (their mother) and plaintiffs Charles and Carol Lallak and Duane and Dee Rank. On May 23, 1984, Busch swore out criminal complaints and obtained warrants for the arrest of Jane Myers, the Lallaks and the Ranks, and, with detective Pint, arrested the Lallaks and Ranks. Jane Myers presented herself at the Scott County jail. The Myers children had previously been removed from the home upon the arrest of Greg Myers. The Ranks had no minor children, and the Lallaks' children had been living with relatives outside of Jordan since shortly after Greg Myers' arrest.

Donald and Cindy Buchan had sought examination by a physician and interviews with deputy sheriffs for their daughter, M. Buchan, after Greg Myers' arrest. M. Buchan was a close friend of the Myers' daughter, and the Myers had babysat for the Buchan children. Through May 1984, M. Buchan reported no abuse. On May 30, 1984, however, Morris was engaged in trial preparation with the Myers' daughter, A. Myers. A. Myers stated that M. Buchan was her friend and that persons who had hurt M. Buchan were A. Myers' parents and M. Buchan's father (but not mother).

Because Donald Buchan was a Scott County deputy sheriff, the BCA rather than the sheriff's office investigated. On June 4, 1984, Special Agent Patrick Shannon of the BCA participated in interviews with the two older Myers children and M. Buchan, all of whom implicated plaintiffs Donald and Cindy Buchan in acts of sexual abuse. Agent Shannon performed a warrantless arrest of the Buchans on June 4, 1984, and swore out criminal complaints on June 6, 1984.[6] The three minor Buchan children were removed from home on the day of their parents' arrest.

By November 1983, the older son of plaintiffs Daniel and Wanda Meger, and possibly their younger son, had been identified as victims of James Rud. The children were living at home, receiving

---

[6]Agent Shannon is not a party to these appeals.

counselling by Scott County Human Services personnel and being questioned by Scott County authorities. On June 5, 1984, the older child described to detectives Busch and Morgan sexual abuse by Daniel Meger. Both children subsequently told Busch and Morgan about acts of anal penetration with fingers and objects and oral sexual activity performed upon them by both parents. On June 14, 1984, the older child told a physician of sexual abuse by both parents. In July or August 1984, both children described sexual abuse by their parents and a grandmother to a private therapist hired when the parents' attorney requested assessment by a private psychologist in lieu of Scott County Human Services personnel.

When her older son's statements about Daniel Meger were communicated to plaintiff Wanda Meger on June 5, 1984, she signed a document authorizing voluntary placement of the children in foster care. However, she states that she was pressured and misled into signing the agreement. The voluntary placement was rescinded in August 1984, at which time the Scott County Human Services Department filed a neglect petition. The Megers were never arrested or charged.

Discovery

After the prosecutor dismissed all outstanding charges, the Minnesota Attorney General's office assumed responsibility both for any additional criminal proceedings which might develop and for the pending proceedings in the Scott County Court, Family Division [family court]. On behalf of the state, the BCA and FBI conducted an intensive investigation into why the criminal charges had been dropped and whether there existed probable cause to bring additional charges of sexual abuse or homicide. These agents recommended to the state Attorney General that no credible evidence existed in support of homicide allegations, and insufficient evidence existed to justify new sexual abuse charges. The Attorney General issued a report entitled *Report on Scott County Investigations*, Hubert H. Humphrey III, Attorney General (Feb. 12, 1985).

In addition, in March 1985, plaintiff Cindy Buchan filed a

petition with the Governor of Minnesota seeking the removal of R. Kathleen Morris from office for malfeasance. *See Bush v.* Perpich, 370 N.W.2d 886, 887 (Minn. 1985). The governor established a commission which conducted hearings and took testimony, *id.* at 888, including some from parties to these appeals.

Besides the volumes of testimony and other evidence generated by these two investigations, substantial discovery occurred in connection with the criminal proceedings, in particular the trial against Robert and Lois Bentz, and the family court proceedings, in particular the Myers and Buchan trials in 1984-85.

Beyond the discovery developed in connection with the state investigations, criminal proceedings and family court matters, the parties to these civil rights cases submitted affidavits and other materials to the district court in support of and in opposition to the defendants' summary judgment motions. Furthermore, the district court declined to stay discovery pending the outcome of these appeals. counsel for the Buchan plaintiffs, for example, has asserted in a brief that as of the date when briefs were prepared, "[i]n fact, discovery in this case is virtually completed by court order on February 14, 1986." Matters developed in discovery which had not been presented to the district court were discussed in various briefs, and we issued two orders in April 1986 permitting expansion of the record before us to include these materials as well as additional documents in response to the supplemented record.

As the result of all of this discovery, a massive multi- volume fact-filled record is before us in connection with these appeals. We reject the plaintiffs' assertion that we should now ignore this record and decide these appeals on the basis of the pleadings alone. *See, e.g., Kompare v. Stein*, 801 F.2d 883, 889 (7th Cir. 1986), reasoning that in determining immunity issues, it is not necessary to accept as true allegations which are wholly without factual support in a record which contains, among other items, evidence developed at the civil rights plaintiffs' prior criminal trial.

> We are aware of our duty to view the facts in the light most favorable to the non-movant, but only *genuine* issues of material fact can defeat a motion for summary judgment. Mere allegations are insufficient to raise a genuine issue. The [plain-

> tiffs] argue for an exception to this rule because the district court limited discovery on the grounds that qualified immunity protects government officials from suit (including discovery), as well as from the payment of monetary damages. The district court's limitation of discovery was proper, particularly because the [plaintiffs] had the opportunity to explore the facts in the previous criminal proceedings.

Id. at 886 (emphasis in original).

The Challenged Conduct

Although phrased in terms of conspiracy, fraud, malice, coercion and violation of constitutional rights and state law, the actual conduct of which the plaintiffs complain amounts to prosecution, handling of evidentiary material, arrest, interrogation of children and separation of parents from children. These acts, plaintiffs assert, caused them to suffer injuries including loss of liberty, loss of employment, emotional distress, alienation of affection between parent and child, injury to reputation and other harms.

The plaintiffs allege that the prosecutor abused the power of her office in the manner in which she initiated or threatened prosecutions, handled evidentiary material and otherwise conducted matters preliminary to and encompassed within the institution of criminal charges. The prosecutor is also alleged to have erroneously advised law enforcement personnel that probable cause existed to arrest various plaintiffs.

The sheriff's deputies allegedly arrested plaintiffs without probable cause and deceived judicial officers as to the reliability of statements by children on which judicial determinations of probable cause were based. The sheriff allegedly failed to intercede to prevent abuses by his deputies and the prosecutor.

The prosecutor, sheriff's deputies, as well as guardians, therapists and a court-appointed attorney are alleged to have interrogated children for an improper purpose (conspiring to elicit fabricated accusations against the plaintiffs) and in an improper manner (using methods so flawed that they inevitably produced false and fabricated accusations).

Various defendants are also alleged to have contributed in one or more ways to the separation of parents from their children. The sheriff's deputies, for example, removed minor children from their homes on "police holds" pursuant to MINN. STAT. ANN. § 260.165(1)(c)(2) (west 1982) upon the arrest of various plaintiffs. The prosecutor may have approved the summary removal of children from the plaintiffs' custody and certainly approved the initiation of neglect proceedings in the family court. She also induced one plaintiff to sign a voluntary placement agreement. Certain therapists advised the family court against visitation between plaintiffs and children. Guardians allegedly advised in favor of foster care, recommended against parental visitation and refused to divulge the location of foster care placements.

We have examined the claims of immunity and other defenses asserted by each defendant with respect to these acts, and we conclude that each defendant is entitled to summary judgment for the reasons set forth below. Accordingly, we affirm in part and reverse in part and remand for further proceedings consistent with this opinion.

PROSECUTOR

Initiating Prosecutions and Handling Evidence

All of the plaintiffs have sued Scott County Attorney R. Kathleen Morris for her role in the initiation of criminal proceedings against them and her handling of evidentiary material. They allege variously that she filed or threatened to file criminal complaints against them recklessly, maliciously, fraudulently and without adequate investigation; that she caused the Bentz plaintiffs to endure a criminal trial; that she resisted certain plaintiffs' pretrial release from custody upon reasonable terms; that she entered into a plea bargain with James Rud which was illegal; that she suborned perjury of a major prosecution witness (James Rud) in exchange for plea bargaining concessions; that she made or caused misrepresentations to the court during family court proceedings; that she caused witnesses to give false and unfavorable testimony; that she

withheld potentially exculpatory evidence, and that she destroyed two items of evidence.

Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976) established that a prosecutor is absolutely immune from a suit for damages under 42 U.S.C. § 1983 for alleged civil rights violations committed in "initiating a prosecution and in presenting the State's case." These functions, "intimately associated with the judicial phase of the criminal process," as opposed to investigative "police work" or administrative duties, must be absolutely shielded in the interests of the office, the judicial system and society.[7]

Thus a prosecutor does not, in a civil rights action for damages,

---

[7]*See Imbler v. Pachtman*, 424 U.S. 409, 424-27 (1976):

> If a prosecutor had only a qualified immunity, the threat of § 1983 suits would undermine performance of his duties no Less than would the threat of common-law suits for malicious prosecution. A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages. Such suits could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate. * * * Further, if the prosecutor could be made to answer in court each time such a person charged him with wrongdoing, his energy and attention would be diverted from the pressing duty of enforcing the criminal law.
>
> The affording of only a qualified immunity to the prosecutor also could have an adverse effect upon the functioning of the criminal justice system. Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence. The veracity of witnesses in criminal cases frequently is subject to doubt before and after they testify * * * . If prosecutors were hampered in exercising their judgment as to the use of such witnesses by concern about resulting personal liability, the triers of fact in criminal cases often would be denied relevant evidence.
>
> The ultimate fairness of the operation of the system itself could be weakened by subjecting prosecutors to § 1983 liability. Various post-trial procedures are available to determine whether an accused has received a fair trial. * * * [Their] focus should not be blurred by even the subconscious knowledge that a post-trial decision in favor of the accused might result in the prosecutor's being called upon to respond in damages for his error or mistaken judgment.

have to defend prosecutorial mistakes if those mistakes occurred in the performance of a function recognized as inherent in the prosecutor's role as an advocate. Moreover, because the immunity depends not upon the defendant's status as a prosecutor but upon the "functional nature of the activities" of which a plaintiff complains, *id.* at 430, immunity for performance of inherently prosecutorial functions is not defeated by allegations of improper motivation such as malice, vindictiveness or self- interest. *See, e.g., Wahl v. McIver*, 773 F.2d 1169, 1173 (11th Cir. 1985); *Lerwill v. Joslin*, 712 F.2d 435, 441 (lOth Cir. 1983). Similarly, allegations of abusive, illegal or unethical conduct must fail if they represent an attempt to impose damages liability for acts encompassed in the initiation or conduct of adversarial proceedings by a prosecutor.

Accordingly, the decision to file charges is protected, even in the face of accusations of: vindictive prosecution, *Wahl v. McIver*, *supra*, 773 F.2d at 1173; or reckless prosecution without adequate investigation, *id.*; *Glick v. Koenig*, 766 F.2d 265, 269 (7th Cir. 1985); *Henzel v. Gerstein*, 608 F.2d 654, 657 (5th Cir. 1979); or prosecution without jurisdiction, *Wahl v. McIver*, *supra*, 773 F.2d at 1173; *Lerwill v. Joslin*, *supra*, 712 F.2d at 438 (even if with malice); or conspiracy to prosecute for a crime that never occurred, *Rachuy v. Murphy Motor Freight Lines, Inc.*, 663 F.2d 57, 58 (8th Cir. 1981). Similarly, threatening criminal prosecution is within the scope of absolute immunity. *Goldschmidt v. Patchett*, 686 F.2d 582, 585 (7th Cir. 1982); *Henzel v. Gerstein*, *supra*, 608 F.2d at 657.

Other acts encompassed within the protected function of initiating a case include instituting the termination of parental rights even if allegedly without notice to the parent, *Martin v. Aubuchon*, 623 F.2d 1282, 1285 (8th Cir. 1980); procuring a warrant for the arrest of a charged defendant, *Lerwill v. Joslin*, *supra*, 712 F.2d at 438, and advocating a particular level of bail, *id.* at 438, 439. A "prosecutor's activities in the plea bargaining context" warrant absolute immunity, *Taylor v. Kavanagh*, 640 F.2d 450, 453 (2d Cir. 1981) (despite alleged misrepresentations). *Cf. McGruder v. Necaise*, 733 F.2d 1146, 1148 (5th Cir. 1984) (claim alleging efforts to intimidate a civil rights plaintiff into dismissing a damages suit in exchange for

dismissal of criminal charges held barred by absolute immunity because "[t]he decision to initiate, maintain, or dismiss criminal charges is at the core of the prosecutorial function.").

As for the handling of evidentiary material, allegations that a prosecutor knowingly offered, used or presented false, misleading or perjured testimony at trial or before a grand jury do not defeat absolute prosecutorial immunity, regardless of how reprehensible such conduct would be if it occurred. *Imbler v. Pachtman*, *supra*, 424 U.S. at 413, 416, 431; *Jones v. Shankland*, 800 F.2d 77, 80 (6th Cir. 1986); Morrison v. City of Baton Rouge, 761 F.2d 242, 248 (5th Cir. 1985) (even if with malice); Fullman *v. Graddick*, 739 F.2d 553, 559 (llth Cir. 1984).

The same is true for allegations of withholding or suppressing exculpatory evidence. *Imbler v. Pachtman*, *supra*, 424 U.S. at 413, 416, 431; *White v. Murphy*, 789 F.2d 614, 615-16 (8th Cir. 1986) (conspiracy to conceal an unlawful arrest and suppress favorable evidence); *Campbell v. Maine*, 787 F.2d 776, 777-78 (lst Cir. 1986) (conspiracy to frame the complainant and failure to disclose exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963)); *Fullman v. Graddick*, *supra*, 739 F.2d at 559 (conspiracy to withhold material evidence helpful to the defense); *Henzel v. Gerstein*, *supra*, 608 F.2d at 657 (suppressing exculpatory evidence).

Forcing a witness to testify and securing the attendance of witnesses "is associated with the judicial process and * * * any claim against a prosecutor arising from that activity is barred by absolute immunity." *Hamilton v. Daley*, 777 F.2d 1207, 1213 (7th Cir. 1985) (despite allegations that the prosecutor knew the testimony to be given would be false). Soliciting and suborning perjured testimony does not create liability in damages for a prosecutor "acting as an advocate in a judicial proceeding." *Tylor v. Kavanaugh*, *Supra* 640 F.2d at 452. *Accord rachyt V. Murphy Motor Freight Lines, Supra,* 617 F.2d 320, 322 (2d Cir.), cert. evidence); *Lee v. Willins*, 617 F.2d 320, 322 (2d Cir.), *cert. denied*, 449 U.S. 861 (1980) (subjecting the complainant to the ordeal of criminal trial by allegedly falsifying evidence and coercing perjured testimony).

In short, with the possible exception of the alleged destruction of

evidence, all of the previously enumerated claims against Morris are barred by absolute prosecutorial immunity, because they represent an effort to impose liability for her role in initiating adversarial proceedings and presenting the prosecutor's case. On the basis of the foregoing authorities and the reasons for the immunity as discussed in *Imbler v. Pachtman*, *supra*, 424 U.S. at 424-27, Morris is entitled to summary judgment as to these claims and allegations.

Destruction of Evidence

As for the two items of evidence which were destroyed, the first was R. Kathleen Morris' 1984 appointments calendar.[8] The calendar is alleged to have significance with respect to two issues: (1) the earliest date at which Morris became actively involved in the events giving rise to these lawsuits and (2) the frequency of her contacts with children.

The plaintiffs assert that Morris, acting as an investigator, became actively involved in ferreting out candidates for prosecution in November 1983. They rely on a statement attributed to Jordan police officer Larry Norring by FBI agent Robert Erwin after an interview between the two on - December 19, 1984. Norring is quoted by Erwin as stating that Morris "got actively involved in the investigation around November 1983." In the same report, however, Norring is quoted as saying that Morris or her staff began interviewing children in the spring (of 1984). Morris identified the date at which she began interviewing children as February 1984.

Since the calendar was for 1984, it could not have been used to establish Morris' activities in November 1983. The calendar therefore is without evidentiary significance with respect to the issue of

---

[8]Morris contends that the calendar was discarded in a routine fashion in November 1984 when she received her new calendar for 1985 (which included the month of December 1984). However, on November 20, 1984, the Lallaks served Morris with a proposed nondestruct order attached to their civil rights complaint. The order directed preservation of "calendars" among other "documents". While the proposed nondestruct order was not signed by a magistrate until December 10, 1984, Morris had been placed on notice that the Lallaks were seeking access to the calendar.

whether Morris' initial involvement began in 1983.

The next issue on which the calendar might have had some relevance was the frequency of Morris' contacts with the children during 1984. The central theory of the plaintiffs' claims is that the children were questioned by a great many people including Morris, law enforcement officers, health professionals and others, all participating in a conspiracy to elicit fabricated accusations against the plaintiffs.

Morris, while denying conspiracy, does not deny that the children were questioned extensively by many people. Nor does she place any specific numerical limit or estimate on the number of overall contacts she had with suspected victims. Thus the calendar, if we accept the plaintiffs' characterization of its contents as true, at most might have served to corroborate the uncontradicted assertion that Morris frequently interviewed children. We therefore perceive no constitutional significance in the destruction of the 1984 calendar.

The other item of evidence which Morris is alleged to have destroyed was a videotape of an interview with the two older Myers children taped at the St. Lawrence State Park Quarry Campgrounds where various children indicated acts of abuse had occurred. There is a conflict in the record concerning whether the tape contained evidence favorable to the plaintiffs. However, the record contains four unrebutted affidavits that Morris had nothing to do with making or destroying the tape.

Detective Pint's affidavit asserts that on May 22, 1984, he determined "without any instructions or requests from the county attorney's office" to videotape an interview at the Quarry Campgrounds with the two children. He taped the interview in the presence of detective Busch, guardian ad litem Paul Thomsen and therapist Tom Price. When he determined that the audio and visual quality of the tape was too poor for subsequent use, he taped over it on May 29, 1984, in a subsequent visit to the campgrounds without the children. According to Pint, Morris "did not give [Pint] any instructions concerning the preservation or erasure of the tape." Nor to his knowledge did Morris ever see the tape.

Detective Busch's affidavit asserts that "Kathleen Morris did not,

to [Busch's] knowledge, see the tape and, to [Busch's] knowledge, did not order or request that it be erased." Detective Einertson had general supervisory authority over detectives Pint, Busch and Morgan during the investigation. Einertson's affidavit states that he never viewed the tape and that he "never received any requests for such a videotape from Kathleen Morris nor did he ever receive any instructions from her to destroy or erase such tapes as may have been made." Morris states by affidavit that she "at no time viewed the videotape and did not advise or instruct anyone to erase or otherwise destroy its contents."

Plaintiffs point to no evidence at all to the contrary. At this stage in these proceedings we are searching for genuine issues of material fact. An unsupported allegation that Morris was responsible for the tape's destruction may not proceed to trial on a record which contains no more than bare allegations that the four affiants testifying to the contrary are lying. Because we find no constitutional significance in the destruction of the calendar and no support for Morris' alleged involvement in the erasure of the videotape, we need not decide whether we agree with the Seventh Circuit that allegations of destruction of evidence by a prosecutor are barred by absolute immunity. *See Heidelberg v. Hammer*, 577 F.2d 429, 432 (7th Cir. 1978).

Arrests

R. Kathleen Morris had no direct role in procuring or executing arrest warrants or performing warrantless arrests. However, she did advise officer Norring and deputies Busch, Morgan and Pint that in her opinion facts related to her constituted probable cause to arrest and charge the plaintiffs. Her opinions in this respect certainly contributed causally to the plaintiffs' arrests. We hold that in providing advice to law enforcement officials concerning the existence of probable cause and the prospective legality of arrests, Morris was functioning in a quasi-judicial capacity as a prosecutor initiating the formal judicial process. *Cf. Henderson v. Lopez*, 790 F.2d 44 (7th Cir. 1986) (absolute immunity shields county attorney

for function of advising county officials of the legality of detaining the plaintiff in jail). She therefore has absolute immunity from suit for her performance of this function.

Questioning Children

All of the plaintiffs have sued R. Kathleen Morris for her role in questioning children. We conclude that she has absolute immunity for this function in the circumstances of these cases.

Imbler v. Pachtman, *supra*, 424 U.S. at 431 n.33, recognized that in some circumstances, obtaining, reviewing and evaluating evidence may serve as a necessary and integral part of the quasi-judicial functions of initiating a prosecution or presenting the government's case.

> *We recognize that the duties of the prosecutor in his role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom.* A prosecuting attorney is required constantly, in the course of his duty as such, to make decisions on a wide variety of sensitive issues. These include questions of whether to present a case to a grand jury, whether to file an information, whether and when to prosecute, whether to dismiss an indictment against particular defendants, which witnesses to call, and what other evidence to present. *Preparation, both for the initiation of the criminal process and for a trial, may require the obtaining, reviewing, and evaluating of evidence.* At some point, and with respect to some decisions, the prosecutor no doubt functions as an administrator rather than as an officer of the court. Drawing a proper line between these functions may present difficult questions, but this case does not require us to anticipate them.

(Emphasis added.)

At least six federal circuit courts have recognized that not all interrogation of witnesses or securing of evidence by other means is necessarily investigative "police work" when performed by a prosecutor. Each of these courts has recognized circumstances in which a prosecutor's fact-finding, interrogation or other evidence-gathering

function was so inherent in the decision whether to initiate a prosecution or in the preparation necessary to present a case that absolute immunity was appropriate for that function in those circumstances.

In *Forsyth v. Kleindienst*, 599 F.2d 1203 (3d Cir. 1979), *cert. denied*, 453 U.S. 913 (1981), a decision related to *Mitchell v. Forsyth*, *supra*, the Third Circuit considered evidence- gathering an advocatory rather than investigative or administrative function to the extent that securing additional information is essential to facilitate the decision whether to initiate prosecution.

> We recognize that the decision of the Attorney General, or a prosecuting attorney, to initiate a prosecution is not made in a vacuum. *On occasion, the securing of* additional information may be necessary before an *informed decision can be made.* To grant a prosecuting attorney absolute immunity over his decision to initiate a prosecution while subjecting him to liability for securing the information necessary to make that decision would only foster uninformed decisionmaking and the potential for needless actions. *We believe that the right to make the* decision without being subject to suit must include some limited right to gather necessary information. At the same time, we are sensitive to the possibility that this narrow exception could be distorted to include all of a prosecutor's investigative activities. *We hold only that to the extent that the securing of information is necessary to a prosecutor's decision to initiate a criminal prosecution, it is encompassed within the protected, quasi-judicial immunity afforded to the decision itself.*

Id. at 1215 (emphasis added).[9]

---

[9]The Third Circuit remanded the *Forsyth* case to the district court for the following determination:.

> [I]f the decision to authorize the wiretaps was made by the Attorney General in an attempt to secure information to determine whether to initiate a criminal prosecution, then he is entitled to absolute immunity from suit challenging that decision. Without a statement of the district court's analysis, we are unable to determine whether the Attorney General's conduct meets that test.

Forsyth v. Kleindienst, 599 F.2d 1203, 1216 (3d Cir. 1979), *cert. denied*, 453 U.S. 913 (1981). On remand, the Attorney General who had ordered the wiretaps expressly denied that the surveillance had been intended to facilitate an advocatory decision, as the Supreme Court noted in *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2810 (1985).

The plaintiffs' grievance with respect to Morris' role in questioning children is that she allegedly used the interviews to coerce perjured statements from young and vulnerable witnesses. The Ninth, Second and Seventh Circuits have addressed similar claims concerning prosecutors who allegedly coerced or induced false testimony from witnesses, finding these allegations barred by absolute immunity. *See, e.g., Demery v. Kupperman*, 735 F.2d 1139 (9th Cir. 1984), *cert. denied*, 469 U.S. 1127 (1985), concluding that when conferring with potential witnesses is for the purpose of deciding whether to file a charge, the interrogation function shares in the absolute prosecutorial immunity for initiating criminal proceedings.

> We think that conferring with potential witnesses for the purpose of determining whether to initiate proceedings is plainly a function "intimately associated with the judicial phase of the criminal process," * * * and is therefore a quasi-judicial function "to which the reasons for absolute immunity apply with full force."

Id. at 1144 (citation omitted). *Accord Lee v. Willins*, *supra*, 617 F.2d at 322, reasoning that the injuries which flow from coercion of false testimony, i.e., trial and imprisonment, are the same injuries which result from the decision to prosecute, and *Imbler v. Pachtman* absolutely shields a prosecutor from having to answer in damages for injuries flowing from the initiation of criminal proceedings. *See also Heidelberg v. Hammer*, *supra*, 577 F.2d at 432 ("[C]harges that the prosecutors induced witnesses to commit perjury are barred by the immunity doctrine.").

In addition, some investigative case preparation can be regarded as an integral component of case presentation. In *Atkins v. Lanning*, 556 F.2d 485 (lOth Cir. 1977), for example, a prosecutor was engaged in initiating criminal proceedings against a large group of drug distributors. As part of an ongoing investigation leading to the identification of additional participants in the scheme, "the district attorney unfortunately caught appellant in the general dragnet," *id.* at 487. The Tenth Circuit decided that absolute immunity attended the prosecutor's acts because the function being performed was "preparing and presenting a case," *id.* at 488.

Some leeway is needed to perform the function of assembling

> the state's case. * * * While it is true that some investigative work is necessarily a prerequisite to the preparation of a prosecuting attorney's case, this does not automatically change the nature of his function to resemble that of a police officer.

Id. (citation omitted.) *See also Demery v. Kupperman*, *supra*, 735 F.2d at 1144, reasoning that "conferring with potential witnesses regarding their knowledge of underlying events is plainly part of a prosecutor's preparation of his case" and therefore immune. *Cf. Cook v. Houston Post*, 616 F.2d 791, 793 (5th Cir. 1980), with regard to a prosecutor interviewing witnesses before presenting their testimony to a grand jury: "Not all of an advocate's work is done in the courtroom. For a lawyer to properly try a case, he must confer with witnesses, and conduct some of his own factual investigation."

In Morris' circumstances, all functions of which the plaintiffs complain post-dated the filing of criminal charges against James Rud. It soon became clear that Rud had engaged in criminal activity with others, but the number of culpable persons was not known in the fall and winter of 1983-84.

As known or suspected victims were interviewed, they described abuse by other adults and identified other child victims. Some of the information emerging from these interviews was already known to law enforcement personnel, and some was new. In part, because much of the sexual contact described by the children took the form of "games" involving groups of adults and children, new information was revealed along with merely corroborative material in various interviews.

In our view, when a victim during questioning regarding a crime committed by one person indicates that others participated, the prosecutor's role in determining the complicity of others is necessary to the function of deciding whether to initiate additional criminal proceedings. The prosecutor in the Scott County cases had an ongoing responsibility to evaluate whether probable cause existed to charge additional persons with the abuse of previously identified victims (e.g., Browns, Bentzes, Myerses, Rawson, Lallaks, Ranks, Buchans, Megers) as well as to determine whether cause existed to charge previously identified perpetrators with vic-

timizing additional children (e.g., Rud, Bentzes, Lallaks).

The plaintiffs' connection with these cases grew out of the James Rud prosecution in the sense that nine of the plaintiffs, Tom and Helen Brown, Robert and Lois Bentz, Greg Myers, Daniel and Wanda Meger and Charles and Carol Lallak, were all incriminated by Rud victims (among others) in interviews after the initiation of criminal proceedings against James Rud. Coralene Rawson was implicated by her daughter who had by then been identified as a victim of Robert Rawson. Robert Rawson had previously been arrested as a participant in sexual activities involving James Rud. After the arrest of Greg Myers (largely on the testimony of a Rud victim), his children implicated Jane Myers, Duane and Dee Rank and Donald and Cindy Buchan and added additional incriminating information regarding Charles and Carol Lallak. Thus only the prosecution of Jane Myers, the Ranks, and the Buchans lacked a direct connection to conferences with victims of James Rud.[10]

In addition, by May 1984, Morris was preparing for trials expected to begin in the summer of 1984. She engaged in court preparation sessions involving the review of witnesses' statements and the introduction of various prospective witnesses to the courtroom setting. From a chronological viewpoint, there was no point between the arrest and filing of charges against James Rud in September 1983 and the dismissal of charges against the other

---

[10]The impression created by the pleadings is that the goal of the investigation was to induce children to incriminate their own parents. However, with the exception of Jane Myers, Coralene Rawson and the Buchans, the plaintiffs were not arrested on the basis of any information obtained from their own children. The interviews in which the Myers children and S. Rawson implicated their mothers occurred well after the arrests of their fathers. (The Myers children were not interviewed at all until after their father's arrest.) M. Buchan was questioned by BCA Agent Shannon only after two of the Myers children had described her as a victim of their own parents and hers. The Bentz children were not interviewed until after their parents' arrest for crimes described by other children. The record does not indicate when the Brown children were first interviewed, but the arrests of Tom and Helen Brown were based on statements by other children. The Ranks had no minor children. The Lallak children resided elsewhere after the arrest of Greg Myers, and the Lallaks' arrest had no connection with any interrogation of their own children. The Megers, who were never arrested, had consented to interviews when their children were identified as Rud victims by November 1983.

defendants in October 1984 when Morris was not either deciding whether to prosecute persons who had been accused or preparing for trial of persons who had been charged, or both.

In these circumstances, we conclude that Morris is absolutely immune from having to defend her role in the interviewing of children. Such involvement as she had in the questioning of children was an integral part of her advocatory functions, i.e., her ongoing prosecutorial responsibilities to decide whom to charge and to prepare for the presentation of her cases.

Separation of Parents From Children

As for the separation of the Brown, Bentz, Myers, Buchan, Rawson and Meger plaintiffs from their children, a member of Morris' staff initiated the neglect proceedings in family court on behalf of the Scott County Human Services Department. Morris signed and approved the neglect petitions.

This court has previously held a county attorney absolutely immune for the function of initiating juvenile dependency and neglect proceedings. *Martin v. Aubuchon*, *supra*, 623 F.2d at 1285. *See also Walden v. Wishengrad*, 745 F.2d 149, 152 (2d Cir. 1984) (attorney for county department of social services has absolute immunity for the initiation of child protective litigation). *Cf. Mazor v. Shelton*, 637 F.Supp. 330, 334-35 (N.D. Cal. 1986) (role of social worker in filing proceedings to protect abused minors is functionally comparable to prosecutor's initiation of the judicial process, thus warranting absolute immunity). Morris has absolute immunity for damage claims arising from this function.[11]

---

[11]Prior to the filing of neglect petitions, however, Morris may have taken other steps contributing to the separation of parents and children. As an example, she may have approved or directed the removal of children from their homes upon the arrest of one or both parents. In this regard, *see* the discussion of qualified immunity for this function *infra* with respect to the sheriff's deputies.

CONSPIRACY

Despite Morris' absolute immunity for her prosecutorial functions, those who allegedly conspired with her do not share her immunity. We therefore examine the allegations that the actions of the other defendants which contributed to the arrest of the plaintiffs, accusations against them and separation from their children were performed not for legitimate purposes but as part of a conspiracy to violate the plaintiffs' civil rights.

The heart of the plaintiffs' case is their position that the children's accounts of sexual abuse were false and the prosecutor, sheriff, sheriff's deputies, guardians, therapists, a court-appointed attorney, and a police officer conspired among themselves and with others[12] to extract fabricated accusations from children in order to target the plaintiffs for prosecution. The alleged purpose of the conspiracy was to invent a "sex ring" as part of a publicity campaign against child abuse and incest undertaken by the conspirators in order to advance the career of the prosecutor.

In *Wright v. South Arkansas Regional Health Center, Inc.*, *supra*, 800 F.2d at 202-05, we addressed a claim that for constitutionally impermissible purposes a state employee initiated an investigation and reported false accusations of crime to criminal justice authorities. The alleged motive for the investigation and fabricated accusations in *Wright* was to retaliate for the plaintiff's prior exercise of first amendment rights and to convert the investigative process into a forum for the aggrandizement of the defendant's career ("* * * to get [the plaintiff] out of his hair and make a big name for [the defendant]," *id.* at 204). The actual conduct in *Wright*, investigating and reporting criminal activity, if not distorted by impermissible motives, was lawful, and the defendant of course denied knowledge or belief that any information he had provided to authorities was false.

---

[12]Additional alleged conspirators variously include social workers, Scott County Human Services Department personnel, officials of Jordan, Minnesota, and others who are not before us in these appeals.

This court therefore had to consider whether an assertion of qualified immunity could be defeated by the charge that facially legitimate investigative and reporting functions had in reality been corrupted into a strategem for the ventilation of false accusations. In *Wright* as in the Scott County cases, a record had been created, and we examined the record for facts and inferences which, viewed in the plaintiff's favor, would create a genuine issue of improper purpose. The same inquiry is appropriate here.

Other than the Lallaks' claim that officer Norring personally disliked them and Greg Myers, no motive beyond a collective intent to advance the prosecutor's career through publicity is even alleged in the Scott County cases. There is no inference in the pleadings, record or even briefs that Morris, the sheriff and his deputies or the other alleged conspirators (except for Norring) had the slightest interest in targeting these particular plaintiffs for any personal motives. Even acquaintance is not alleged except for the previous working relationship between Donald Buchan and the sheriff's department and Norring's connection with Greg Myers and the Lallaks. Why this diverse group of personalities and offices should have cooperated with each other in a scheme to advance R. Kathleen Morris' career is clarified nowhere in the pleadings, record or briefs. Moreover, the record contains evidence wholly inconsistent with this allegation of common purpose. Specifically the record strongly suggests that the investigative effort was riddled with personality conflicts and jurisdictional frictions among, for example, the prosecutor and the sheriff, the sheriff and the Jordan police chief, and even the sheriff and the BCA.[13]

As for the guardians, therapists and court-appointed attorney,

---

[13]Also inconsistent with the conspiracy claim is the fact that while the plaintiffs allege a conspiracy among the defendants to extract fabricated accusations from children, they make no effort to account for similar accusations from nonconspirators. Both Daniel and Wanda Meger, for example, reported that their sons had told them of acts of sexual abuse by Charles and Carol Lallak. Similarly, the youngest Myers child, a two year old boy, was not questioned. However, an examination by a pediatrician revealed physical evidence which in the physician's opinion was consistent with, although not conclusive evidence of, a history of anal sexual penetration.

most of the injuries which these persons allegedly conspired with others to inflict preceded their employment and any involvement in these cases. Like the other defendants, these private parties are alleged to have conspired with Morris and others to arrest the plaintiffs, separate them from their children and coerce fabricated accusations, all as part of a conspiracy to invent a sex ring.

However, none of the defendant guardians and therapists in these appeals (or the attorney for S. Rawson) was employed to assist a child until after that child had already been removed from home upon the arrest of one or both parents, and the family court had determined that a juvenile protection matter existed. Custody of each such child was by then in the family court, and the child was living in foster care.

The acts which these persons performed, attending court appearances, making recommendations to the family court, questioning children about their version of events and reporting statements and opinions concerning abuse were expressly or implicitly within their professional duties. The family court expressly authorized the guardians, for example, to participate in interviews between wards and law enforcement personnel. The plaintiffs attack various decisions by the guardians, therapists and attorney, for example to recommend against visitation, as proof of conspiratorial purpose. In essence, they contend that the performance of their duties by these professionals was directed and tainted by a conspiratorial purpose to frame the plaintiffs.

As in *Wright*, *id.* at 204, we conclude that the plaintiffs' assertions of conspiratorial purpose amount to no more than unsupported allegations of malice. *See Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) ("[A]llegations that a conspiracy produced a certain decision should no more pierce the actor's immunity than allegations of bad faith, personal interest or outright malevolence."). We think that more than the mere recitation of an improper state of mind such as malice, bad faith, retaliatory motive or conspiracy is required to defeat qualified immunity for conduct which, absent that state of mind, would be constitutionally acceptable or protected by immunity.

We therefore decide that a conclusory and unsupported allegation of conspiratorial purpose fails to defeat an assertion of qualified immunity by a defendant otherwise entitled to that defense. We conclude, in addition, that the pleadings and record are deficient to create a triable issue as to the participation by any of the defendants in these appeals in a conspiracy to violate the plaintiffs' civil rights.

Many people believed that children had been abused by the plaintiffs. Within the realm of their various professional responsibilities, they acted upon that belief. A commonly held belief that a crime has been committed is not a conspiracy. Various people engaged in investigating and reporting suspected criminal activity does not amount to conspiracy. We look for a genuine factual issue of concerted activity toward an unlawful objective. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970) (to create a genuine issue of conspiracy, plaintiffs had to point to at least some facts which would suggest that the defendants "reached an understanding" to violate their rights). *See also Deck v. Leftridge*, 771 F.2d 1168, 1170 (8th Cir. 1985) ("allegations of a conspiracy must be pleaded with sufficient specificity and factual support to suggest a 'meeting of the minds' [directed] "toward an unconstitutional action * * * .,") (citations omitted).

We have found inadequate record support to create a genuine issue of concerted activity directed at a common goal to achieve an unlawful purpose. Therefore, the pleading deficiencies and lack of evidence of substance sufficient to create a submissible issue of fact require the dismissal of the plaintiffs' conspiracy claims. Next we examine the defendants' conduct to determine whether, in the absence of a conspiracy, the conduct itself violated clearly established constitutional norms.

DEPUTY SHERIFFS

Arrests

Detectives Busch, Morgan and Pint are defendants in the Bentz, Myers, Lallak and Buchan cases. Detectives Busch and Morgan are

also defendants in the Meger case. Busch was the criminal complainant and an arresting officer in the Myers and Lallak cases. Morgan was the criminal complainant in the Bentz case and an arresting officer in the Myers and Lallak cases. Pint was the criminal complainant in July 1984 when additional charges were filed against the Bentz plaintiffs on information received from K. Fossen, S. Krahl, J. Brown, and the Bentz children. Other than their role in seeking and performing arrests, the deputies have been sued for their conduct in interviewing various children and contributing to the separation of plaintiffs from their children.

The allegations against detectives Busch, Morgan and Pint amount to the following: (1) that they sought arrest warrants, swore out criminal complaints and performed arrests without probable cause, (2) that they deceived the judicial officers who found probable cause, (3) that they used improper questioning techniques in interrogating minor witnesses and (4) that they caused the separation of parents and children. We first address the issues of arrest without probable cause and deception of judicial officers.

MINN. STAT. ANN. § 609.342(1)(a) (West 1964 and Supp. 1987) defines as criminal sexual conduct in the first degree "sexual penetration with another [if] the complainant is under 13 years of age and the actor is more than 36 months older than the complainant." Section 609.343(1)(a) defines as criminal sexual contact in the second degree "sexual contact with another person [if] the complainant is under 13 years of age and the actor is more than 36 months older than the complainant" even if the sexual contact was not coerced. Section 609.05 imposes criminal liability on one who intentionally aids, conspires with or procures the other to commit a crime. Plaintiffs Robert and Lois Bentz, Greg and Jane Myers and Charles and Carol Lallak assert that the deputies lacked probable cause to arrest them for commission of these offenses.

Probable cause "is a reasonable ground for belief of guilt." It means "less than evidence which would justify *** conviction [but] more than bare suspicion:"

> Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had

> reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.

Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (citations omitted).

> In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

Id. at 175. *See also Hannah v. City of Overland*, 795 F.2d 1385, 1389 (8th Cir. 1986):

> This Court often has addressed the issue of probable cause. We previously have stated that [i]n determining whether probable cause exists to make a warrantless arrest, a court will consider whether the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had committed . . . an offense. Probable cause is to be assessed in terms of the circumstances confronting a reasonably cautious police officer at the time of the arrest, and the arresting officer is entitled to consider the circumstances, including arguably innocent conduct, in light of his training and experience. "[T]he probability, and not a prima facie showing, of criminal activity is the standard of probable cause."
>
> (Citations omitted.)

Plaintiffs assert that the existence of probable cause for their arrests is a factual determination which should be made in the first instance by the district court. They contend that the only function of this court in the context of the present appeals is to determine whether the fourth amendment right to be free from arrest without probable cause was clearly established, which of course it was, when the plaintiffs were arrested. Therefore, plaintiffs reason, because the right to be free from arrest based on less than probable cause was clearly established in 1984, these cases should be remanded for trial on the merits concerning whether probable cause existed in fact for the arrests.

We think that this argument misconstrues the nature of the inquiry we are required to make on appeal from the denial of a pretrial motion asserting qualified immunity for the function of procuring and making arrests. The issue for immunity purposes is not probable cause in fact but "arguable" probable cause. *Floyd v. Farrell*, 765 F.2d 1, 5 (lst Cir. 1985) ("[S]eeking an arrest warrant is 'objectively reasonable' so long as the presence of probable cause is at least arguable. * * * We think this rule can be extended to warrantless arrests as well * * * ").

Malley v. Briggs, 106 S.Ct. 1092 (1986) indicates that an officer requesting an arrest warrant will be shielded by qualified immunity for that function unless judged on an objective basis, "no officer of reasonable competence would have requested the warrant." *Id.* at 1099 n.9. "Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable * * * will the shield of immunity be lost." *Id.* at 1098.

> Defendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue; but *if officers of reasonable competence could disagree on this issue, immunity should be recognized.*

Id. at 1096 (emphasis added). We therefore review the information before the deputy sheriffs when they swore out criminal complaints and performed arrests to determine whether no reasonably competent officer would have sought to arrest the Bentz, Myers and Lallak plaintiffs on the basis of the known facts and circumstances.

Robert and Lois Bentz were arrested on January 20, 1984, on the basis of accounts by two ten year old children (interviewed separately) who had not been in contact with each other for month or more. The parents of one of the children, neighbors of the Bentz family, had been arrested nine days previously. Therefore, that child had not, as alleged, been "isolated and confined" for a prolonged period in foster care before making the statements which incriminated the Bentzes. Both children, in accounts that were consistent with each other and not identical, explicitly described "hide and seek" games at the Bentz residence in which children were required to perform and submit to acts of oral sex with Robert and Lois

Bentz. Other children previously interviewed had named the Bentz children as victims of abuse by other adults.

The arrest of Greg Myers was based upon statements provided by three children. One, a twelve year old girl, had been interviewed only once before by law enforcement personnel and was living at home with her parents. She had previously been identified by other children as a victim of sexual involvement with adults and children. These circumstances and the absence of any known reason why she would fabricate accusations against anyone are circumstances recounted by detective Busch to establish her reliability. Her mother was within hearing distance of the interview in which this child implicated Greg Myers (and others). This child described games of hide and seek, tag and musical baseball in which sexual activity between adults and children figured prominently, and she identified Greg Myers by name and as a policeman with the Jordan police department.

The other two informants, the nine and ten year old children of plaintiffs Tom and Helen Brown, described incidents at the Quarry Campgrounds. The Brown children had been placed in foster care and were not living in the third child's neighborhood at the time of their statements. One of the Browns' children described an assault on himself by Greg Myers in Myers' truck which the child described as a Chevrolet, 4 X 4 green pickup with a snowplow and camper. After the warrantless arrest of Greg Myers but before detective Busch swore out a criminal complaint on February 8, 1984, Myers admitted being present at the campgrounds in the time frame described by the Browns' children and acknowledged the presence there of the Browns' children during that period. He also acknowledged that he had driven a green, 4 X 4 Chevrolet pickup truck with a white camper to the campgrounds.

Jane Myers and Charles and Carol Lallak were arrested on the basis of statements made by the two older Myers children, then twelve and five years old, on three occasions in May 1984. They described incidents at the Quarry Campgrounds where Greg Myers and three other children had already indicated the presence of the Myers family during the time frame described. The incidents, some

involving group kinds of sexual activity, were described with specificity. In addition, other children had previously implicated the Lallaks, i.e., a child of Chris Brown and a son of Daniel and Wanda Meger. Greg Myers had by then failed two polygraph tests on the issue of sexual contact with children, lending credibility to the accounts by his own children of sexual abuse by Greg Myers in conjunction with others.

These accounts were not hearsay or anonymous tips, but were detailed descriptions of criminal activity by suspected victim-eyewitnesses whose names and ages were known to the deputies and were provided to the judicial officers who also found probable cause. In no case did an arrest occur on the basis of only one child's account, although in Minnesota, to support a prosecution for sexual abuse of a child, the testimony of a juvenile victim need not be corroborated. *See* MINN. STAT. ANN. § 609.347(1) (Supp. 1987) in effect in 1984. As for the suggestion that the age and particular vulnerabilities of young children should render their statements less credible, we reject the inference that law enforcement personnel are necessarily less entitled to rely on details of criminal activity described by children than those described by adults. In light of the facts and circumstances before the deputies, we conclude that their conduct in seeking and performing the arrests was objectively reasonable. At the very least, officers of reasonable competence could have differed as to probable cause. *Malley v. Briggs*, *supra*, 106 S.Ct. at 1096.[14]

Deception of Judicial Officers

The Bentz, Myers and Lailak plaintiffs also contend that detectives Busch, Morgan and Pint perpetrated a fraud upon the judicial officers who found probable cause to arrest and charge these plaintiffs. The essence of the alleged deception was the representa-

[14]The Ninth Circuit was satisfied that the considerably less substantial information available to deputy sheriffs in *White v. Pierce County*, 797 F.2d 812, 815-16 (9th Cir. 1986) established probable cause to believe that a child had been abused and could legally be taken into custody.

tion that the child informants were reliable and their statements credible.

If the allegations of judicial deception represent an attempt to hold the officers accountable for some subjective state of mind such as malice, bad faith or improper motivation, such claims are barred by qualified immunity if the conduct (procuring and making arrests) was objectively reasonable, as we have held that it was. *See Malley v. Briggs*, *supra*, 106 S.Ct. at 1096: "Under the *Harlow* standard * * * an allegation of malice is not sufficient to defeat immunity if the defendant acted in an objectively reasonable manner." *See also Floyd v. Farrell*, *supra*, 765 F.2d at 6 (evidence that the true motive for the plaintiff's arrest was malice, rather than the arresting officer's bona fide belief that probable cause existed, is irrelevant to a qualified immunity defense if, viewed objectively, an officer in the same circumstances could reasonably have believed he had probable cause). "The objective focus of the *Harlow* test precludes us from undercutting [a] finding of objectively reasonable belief with inquiries into actual motives or beliefs." *Id. Accord Hannah v. City of Overland*, *supra*, 795 F.2d at 1390 ("If there was probable cause to arrest [plaintiff], based on an objective reasonableness standard, the subjective motivations of the arresting police officers are irrelevant").

Construed liberally, the allegations of judicial deception may state a claim that the deputies deliberately or recklessly incorporated known falsehoods into their reports, criminal complaints and warrant applications. If this claim were true, then the deputies' sworn representations as to the existence of probable cause would be perjury or close to it, and perjury is not objectively reasonable conduct. "Where the judicial finding of probable cause is based solely on information the officer knew to be false or would have known was false had he not recklessly disregarded the truth, not only does the arrest violate the fourth amendment, but the officer will not be entitled to good faith immunity." *Olson v. Tyler*, 771 F.2d 277, 282 (7th Cir. 1985).

However, a substantial preliminary showing of dishonesty is necessary to obtain even an evidentiary hearing in an attempt to

impeach a warrant application which on its face reveals probable cause. "Mere unfounded and unsupported allegations that the warrant was not based on probable cause, but rather upon false statements, and deception are not sufficient to subject officials to the cost and burdens of trial." *Fullman v. Graddick*, *supra*, 739 F.2d at 562. *Accord Rodgers v. Lincoln Towing Service, Inc.*, 771 F.2d 194, 200-01 (7th Cir. 1985) (in the absence of identified facts indicating that an arresting officer knew his informants were lying, the officer was entitled to arrest on the basis of statements establishing probable cause).

In analogous circumstances, the Supreme Court has indicated that bare allegations of misrepresentation do not suffice to undermine the presumption of validity accorded an affidavit supporting a warrant request. *See Franks v. Delaware*, 438 U.S. 154, 171 (1978) (challenge to the veracity of a search warrant affidavit in a criminal proceeding):.

> There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. *To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross- examine*. There must be allegations of deliberate falsehood or of reckless disregard for the truth, *and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations* iof negligence or innocent mistake are insufficient. i The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant.

(Emphasis added.) *Accord United States v. Garcia*, 593 F.2d 77, 79-80 (8th Cir. 1979).

The plaintiffs have not even approached this standard of specificity. No facts have been recited which would indicate that any of the deputies actually believed the plaintiffs were innocent or the children were lying when the deputies acted on the children's state-

ments. The complaints contain conclusory assertions of conspiracy, "confinement" of children and intensive questioning.[15] But plaintiffs point to no record evidence which directly or even inferentially suggests perjury by the deputies whether through fabricating charges themselves or through vouching for statements which they had actual knowledge or should have known were false.

If the plaintiffs' theory is that because of alleged inadequate investigation or flawed interrogation, the deputies should not have believed the children's statements, we reiterate that assertions of lack of due care will not suffice to undermine the presumptive validity of a sworn statement submitted to obtain a warrant. *Franks v. Delaware*, *supra*, 438 U.S. at 171. To overcome this presumption requires no less than a specific affirmative showing of dishonesty by the applicant. *Id.* We are presented with no factual specificity or record support for the contention that the deputies deliberately falsified reports or reported falsehoods of which they were or should have been aware. The Bentz, Myers and Lallak plaintiffs have failed to make a preliminary showing adequate to overcome the presumed validity of warrant applications which on their face contained information that competent officers could reasonably believe amounted to probable cause. Thus the qualified immunity to which the deputies are entitled by virtue of *Malley v. Briggs*, *supra*, is not defeated by the plaintiffs' allegations of judicial deception.

Questioning Children

We have discussed the absence of support for the contention that detectives Busch, Morgan and Pint either falsified reports or knowingly incorporated falsehoods into their warrant applications. We have also noted the absence of any factual specificity or evidentiary indication of conspiracy involving these officers. The plaintiffs have alleged, however, that the deputies' interrogation conduct was so

---

[15]The record reveals that "confinement" of children refers to their placement in foster care rather than the circumstances in which they were interviewed.

improper that in essence only fabricated accusations could have emerged from the interview sessions.

We examine the specific interrogation conduct identified in the record to determine whether it so exceeded accepted legal norms for the questioning of witnesses and victims that the interrogating detectives knew or should have known their conduct would violate the rights of accused persons. We do not think it sufficient for purposes of this inquiry to determine only whether fourth, fifth, sixth and fourteenth amendment rights were clearly established in 1984. Our inquiry is whether from a 1984 perspective the law was clearly established that the conduct in which the deputies engaged would violate such rights.[16]

When no record has been created, only the pleadings are available as a source from which to identify the nature of the allegedly objectionable conduct. However, as in these cases, once affidavits and other materials have been added to the pleadings to clarify and define the nature of the challenged conduct, we do not ignore these materials. We do construe the facts revealed by these materials and all reasonable inferences therefrom in favor of the nonmoving parties when identifying the acts complained of so as to determine whether acts of these kinds were in violation of constitutional standards clearly established at the time. *Mitchell v. Forsyth, supra,*

---

[16]Qualified immunity would be meaningless if it could be defeated merely by the recitation of some well-recognized right and a conclusory allegation that the defendant infringed it. To determine a qualified immunity defense, the court must focus on the specific nature of the conduct complained of and the state of the law with respect to the identified conduct at the time the official acted. In *Mitchell v. Forsyth*, for example, the fourth amendment right to be free from unreasonable searches was certainly clearly established when the attorney general ordered wiretaps. What was not clearly established was whether the specific conduct in the context indicated (warrantless wiretapping for domestic national security purposes) was clearly constitutionally proscribed. *See also Davis v. Scherer*, 104 S.Ct. 3012, 3022 (1984) (Brennan, J., concurring in part and dissenting in part):

> In order to determine whether a defendant has violated a plaintiff's clearly established rights, it would seem necessary to make two inquiries * * * : (1) which particular act or omission of the defendant violated the plaintiff's federal rights, and (2) whether governing case or statutory law would have given a reasonable official cause to know, at the time of the relevant events, that those acts or omissions violated the plaintiff's rights.

105 S.Ct. at 2816; *Kompare v. Stein*, *supra*, 801 F.2d at 886, 889.

As clarified and given substance by the record, the plaintiffs' primary objections to the deputies' interrogation conduct concern the frequency with which children were questioned and the continued questioning of some children after they initially denied sexual abuse. There is evidence that some children who were questioned in these cases consistently denied having been abused and then later made accusations. Others initially denied abuse but talked about "bad secrets" and exhibited fear and sadness when the topic of sexual activity was introduced. Some children recounted events and later recanted them. Others who had initially denied abuse later gave detailed accounts of group "parties" and "games" in which sexual assaults on children had occurred.

Besides extensive and frequent questioning, the plaintiffs have adduced evidence that leading questions, photographs of suspects and information concerning statements by other children were used in some questioning sessions. There is some evidence that an atmosphere was created in which children were encouraged to make revelations.

We do not resolve whether any or all of these questioning techniques were used. There is sufficient evidence in the record to create a triable issue that some or all of this conduct occurred. We address only whether, if these interviewing techniques were used, it was clearly established at the time (if even today) that they were in violation of constitutional standards protecting accused persons from suggestive or coercive interrogation of witnesses and victims.

We have been furnished with no evidence of any generally accepted standard concerning how often and in what circumstances a child who is a suspected victim or who has been identified by others as a victim of sexual abuse may legitimately be questioned without compromising his or her effectiveness as a witness and without conflicting with the rights of any persons subsequently accused by the child. The uncertainty surrounding acceptable investigative techniques for suspected child sexual abuse derives in part from the unique reluctance of victims of this crime to acknowledge that it has occurred. The record contains materials documenting the reluctance

of juvenile sexual abuse and incest victims to disclose the experience.[17] *See, e.g.*, F. SINK AND G. GRAEF, In the Courtroom or the Clinic: Intervention Problems and Solutions with Childhood Sexual Abuse (paper presented at 62nd Annual Meeting of American Orthopsychiatric Association, April 1985 by Frances Sink, Ph.D., Harvard Medical School instructor in child development and psychopathology):

> In the clinical setting, a child's reluctance to disclose sexual abuse and seek help or redress is viewed as a reaction *commonly* associated with abuse. * * * Children consciously and unconsciously deny memories of their abuse. In some cases, the child's fear of retaliation if they disclose is so strong that they force themselves to pretend and not let on to anyone that the abuse occurred, even with direct questioning. Additionally, the painful feelings associated with the abuse, cannot be tolerated by the child and must be repressed along with memories of the events. * * * When disclosure becomes possible, it takes place in a partial, halting fashion: approaching the threatening material and backing away, revealing abuse, then denying it. This process has been called the "No- Maybe- Sometimes- Yes- " syndrome.

Id. at 3-5 (emphasis in original). *Accord State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984):

> If the victim of a burglary failed to report the crime promptly, a jury would have good reason to doubt that person's credibility. A young child subjected to sexual abuse, however, may for some time be either unaware or uncertain of the criminality of the abuser's conduct. * * * [U]ncertainty becomes confusion when an abuser who fulfills a caring-

---

[17]The record contains at least one clear example of this problem. In January 1984, shortly after her parents arrest, B. Brown, then nine years old, adamantly denied to an examining physician that she had ever experienced sexual abuse by family members or others. Her brother, age ten, had already reported to the doctor that an older stepbrother had abused her. When the doctor confronted B. Brown with her brother's statement, she still denied the experience. Meanwhile, on the same day or shortly thereafter, the stepbrother, then eighteen years old, gave detective Morgan a detailed account of repeated acts of sexual abuse he had performed upon B. Brown and her brother. The stepbrother also described warning his stepsister not to tell. The stepbrother's account of these events does not appear to be contested by anyone connected with these cases.

> parenting role in the child's life tells the child that what seems wrong to the child is, in fact, all right. Because of the child's confusion, shame, guilt, and fear, disclosure of the abuse is often long delayed.

See also Report on Scott County Investigations, Hubert H. Humphrey III, Attorney General (Feb. 12, 1985) at 10:

> In working with child sex abuse it is not unusual for children to initially deny being abused. In subsequent interviews they may finally admit what happened. However, the Scott County cases raise the issue of how long and how often one can continue to question children about abuse before running the risk of false accusation.

While the record contains examples of investigative mistakes and flawed interrogation, particularly from the standpoint of successful prosecution of those implicated by children who have experienced extensive questioning, an imperfect investigation without more does not deprive the investigators of qualified immunity. Immunity is forfeited for the questioning function upon at least a preliminary showing that the interrogation so exceeded clearly established legal norms for this function that reasonable persons in the detectives' position would have known their conduct was illegal. *See Kompare v. Stein*, *supra*, 801 F.2d at 887 ("The question is whether the state of the law was such that a reasonable person would have known [his] actions were unconstitutional. Furthermore, a reasonable person is not expected to act as a legal scholar and predict the future direction of the law. Closely analogous cases, decided before the defendant acted * * * are often required to find that a constitutional or statutory right is clearly established.").

We conclude that the interviewing conduct occurred in a grey area of investigative procedure as to which there were, and probably still are, less than clearly established legal norms. The grey area referred to involves the extent to which juvenile suspected sexual abuse victims may reasonably be questioned, particularly if they initially deny abuse, and the extent to which leading questions, confrontation with reports by others and photographs of suspects may be used. *Cf. United States v. Dorian*, 803 F.2d 1439 (8th Cir. 1986), affirming (over a dissent) the admission of a foster mother's

testimony concerning incest reported to her by the criminal defendant's daughter, notwithstanding interviewing techniques including: continued questioning concerning specific acts despite the victim's initial denials, multiple interviews, use of anatomically correct dolls, direct questions regarding touching parts of the body and touching of a hurtful, frightening nature, and questioning by a person (the foster mother) who, because of affection, the child may have wished to please.

We do not consider the standards for the interrogation of juvenile witnesses and victims, particularly in the area of sexual abuse, so clearly established in 1984 that on the basis of hindsight the deputies should now be forced to defend their questioning techniques in these damages suits.[18] Accordingly, we conclude that qualified immunity shields deputy sheriffs Busch, Morgan and Pint from any further litigation of this issue in the cases before us on appeal.

Separation of Parents from Children

The *Report on Scott County Investigations*, Hubert H. Humphrey III, Attorney General (Feb. 12, 1985), which plaintiffs and defendants cite in support of various points, concluded that the hasty removal of children from their homes, extensive questioning of juvenile witnesses and initiation of charges before conducting additional investigation undermined the ability of law enforcement personnel to corroborate accusations and achieve successful prosecutions. As an example, as part of the overall investigation, some

[18]The nature and extent of permissible interrogation is but one of many unsettled questions in the context of child abuse investigative procedures. See, *e.g.*, *Darryl H. v. Coler*, 801 F.2d 893, 908 (7th Cir. 19865, upholding qualified immunity for investigators who, over parental objections, conducted visual inspections of disrobed children for evidence of abuse. "Neither the Supreme court nor any other circuit has addressed the application of the fourth or fourteenth amendment in the context of a child abuse investigation. The American Civil Liberties Union * * * noted that the application of the fourth amendment to child abuse investigations presents a case of first impression in this circuit." Id.

physical evidence of abuse was recovered.[19] However, law enforcement officers had reason to believe from the statements of certain children that photographs, videotapes and other items of physical evidence were in existence. Nevertheless, when they thought they had probable cause to arrest a suspect and reasonable belief that children were in danger, the sheriff's deputies acted on those beliefs rather than waiting to conduct background investigations, surveillance, mail covers and searches.

Upon the arrests of Tom and Helen Brown, Robert and Lois Bentz, Greg Myers and Donald and Cindy Buchan, their children were removed from the homes of these plaintiffs by sheriff's deputies acting pursuant to MINN. STAT. ANN. § 260.165(1)(c)(2) (West 1982). Section 260.165(1)(c)(2) authorizes a peace officer to take a child into immediate custody without a warrant "when a child is found in surroundings or conditions which * * * such peace officer reasonably believes will endanger such child's health or welfare."

With the exception of the Buchans' five year old daughter, the children thus removed had not incriminated their own parents. The issue for immunity purposes therefore is whether the members of the plaintiffs' family units had a clearly established right to remain together prior to any initiation of charges of intrafamilial abuse.

The prolonged separation of parents and children derived from family court orders finding juvenile protection matters and ordering foster care placement. Thus we understand the claims against the deputies to be directed at the initiation of this process by the summary removal of children before attempts were made to substantiate incriminating statements of other children through normal investigative techniques.

If there was a "legitimate question" as to the legality of summarily separating children from parents who had been accused of

---

[19]The affidavits of Morris and deputy sheriff Einertson indicate that objects including candles and bowling pins which children had described as involved in sexual acts were recovered and when tested by BCA scientists were found to be contaminated with human feces.

criminal acts towards others, the damages claims against Morris[20] and the sheriff's deputies for that conduct are barred by qualified immunity. *See Mitchell v. Forsyth*, *supra*, 105 S.Ct. at 2820 n.12; *Patzner v. Burkett*, 779 F.2d 1363, 1370 (8th Cir. 1985).

The Supreme Court has recognized a liberty interest which parents and children have in the care and companionship of each other. *See, e.g., Lehr v. Robertson*, 463 U.S. 248, 258 (1983) (" * * * the Court has found that the relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection.").

The right is not absolute, however. "The intangible fibers that connect parent and child have infinite variety * * * . It is self-evident that they are sufficiently vital to merit constitutional protection *in appropriate cases*." *Id.* at 256 (emphasis added). *See also Backlund v. Barnhart*, 778 F.2d 1386, 1389 (9th Cir. 1985) (parents have no clearly established right to unlimited exercise of religious beliefs on their children; the state as parens patriae may, for example, enforce school attendance, prohibit child labor and require vaccination).

The liberty interest in familial relations is limited by the compelling governmental interest in protection of minor children, particularly in circumstances where the protection is considered necessary as against the parents themselves. *See, e.g., Fitzgerald v. Williamson*, 787 F.2d 403, 408 (8th Cir. 1986) ("[I]t does not shock our conscience or otherwise offend our judicial notions of fairness to hear that caseworkers responsible for an allegedly abused child arranged for the child to be examined by a psychologist and, after receiving confirmation of child abuse, reduced the parents' visitation rights and permitted the child to remain with her foster parent when the foster parent moved out of the parents' geographical area,"). *See also Bohn v. County of Dakota*, 772 F.2d 1433, 1439

---

[20]We do not think that Morris has absolute immunity for this conduct whatever her participation in it, because the removal of children from the homes of persons arrested for sexual abuse is not case initiation, presentation or even preparation, at least when the arrests were not for the abuse of the children being removed. We do consider her shielded by qualified immunity for this function to the same extent and on the same basis as the sheriff's deputies.

(8th Cir. 1985), *cert. denied*, 106 S.Ct. 1192 (1986) (challenged procedures for contesting a child abuse determination were adequate to protect the parents' liberty interest in light of the government's "strong interest in protecting powerless children who have not attained their age of majority but may be subject to abuse or neglect."). *Cf. Walden v. Wishengrad*, *supra*, 745 F.2d at 152 (commenting on the need for vigorous child protective litigation).

The Seventh Circuit in discussing the meaning of clearly established rights has suggested that if the existence of a right or the degree of protection it warrants in a particular context is subject to a balancing test, the right can rarely be considered "clearly established," at least in the absence of closely corresponding factual and legal precedent. *Benson v. Allphin*, 786 F.2d 268, 276 (7th Cir.), *cert. denied*, 107 S.Ct. 172 (1986). *See also Snyder v. Kurvers*, 767 F.2d 489, 497-98 (8th Cir. 1985), reasoning as to privacy rights that the "mere articulation of a general privacy interest * * * does not end the inquiry into the issue of [qualified] immunity." The interest asserted "must be examined in the light of the circumstances of the claim." Where the state asserts a compelling interest for intruding into the plaintiff's privacy, the balance may weigh against protection of the right, and the intrusion may be justified.

The county attorney's office considered children at risk in homes where the prosecutor and investigators believed there was probable cause that one or both parents had been sexually abusing other children. In our view, the parental liberty interest in keeping the family unit intact is not a clearly established right in the context of reasonable suspicion that parents may be abusing children. If law enforcement personnel who have at least arguable probable cause to believe that adults have been molesting children are not entitled to reasonable belief that the adults may pose a danger to their own children, then the law was (and is) not clearly established on this point. There is certainly no available legal precedent to this effect.

Moreover, in the Brown, Bentz, Myers and Buchan cases, some of the children who reported that these plaintiffs abused them also alleged that these plaintiffs had engaged in sexual acts with their own children. No legal precedent has been offered suggesting that

such reports do not suffice to create a reasonable belief that children so identified are in danger. Nor is there any legal precedent which suggests that acting upon a reasonable belief that children are endangered by continued presence in their homes must be deferred until the completion of additional investigation. The "reasonable belief" standard of MINN. STAT. ANN. § 260.165(1)(c)(2) reflects a legislative policy in favor of vigorous and immediate child protective endeavors. Although potentially intrusive, the statute itself is not challenged by the plaintiffs on constitutional or other grounds.

We therefore conclude that there was, at a minimum, a legitimate question concerning the legality of hastily removing minor children from the plaintiffs' custody upon the arrest of one or both parents for sexually abusing other children, at least, as here, in circumstances where the other children had described abuse by the arrested persons upon their own children. The prosecutor and the sheriff's deputies are protected by qualified immunity from any further litigation of this issue in the cases before us on appeal.[21]

Deputy Sheriff Einertson

Only the Lallaks have sued deputy sheriff David Einertson. The only allegations in the Lallaks' complaint which even arguably refer to Einertson are the following: Paragraph 20 alleges that "[d]efendants and their agents wrongfully, unlawfully * * * began interrogating plaintiffs about alleged child sex abuse and incest" and continued interrogations until May 23, 1984. Paragraph 24 alleges that Einertson, the sheriff and other deputies "exceeded the scope of their agency * * * ." Paragraph 29 alleges that all defendants conspired with Morris to invent a sex ring and to target the Lallaks for prosecution recklessly. Paragraph 65 alleges that the county,

[21]For similar reasons, we conclude that Morris is shielded by qualified immunity from further litigation concerning her participation in obtaining the signature of Wanda Meger on a document authorizing foster care placement of the Megers' sons. Whatever her role in the placement, no efforts were made in this regard until after one or both of the Megers' children had reported having been abused by their father.

board of commissioners, county attorney's office and "Scott County Sheriff's Department," among others, failed to supervise and train their agents. We conclude that none of these allegations states a claim against deputy Einertson, that the record contains no evidentiary support for the conclusory allegations that he violated the Lallaks' constitutional rights, and that Einertson is protected by qualified immunity for the acts he did perform.

Questioning suspects is legitimate investigative conduct. The pleadings, record and briefs indicate no theory or facts on which Einertson could be liable for the act of questioning Charles and Carol Lallak. Moreover, the record does not indicate that he did question them. The allegation that Einertson "exceeded the scope of his agency" does not state a claim for the violation of the Lallaks' civil rights, nor does it convey any information. We have already discussed the absence of any factual specificity or evidentiary support for the conspiracy allegation. Nor do the pleadings, record or briefs describe any specific acts by Einertson allegedly taken in association with or furtherance of an alleged conspiracy.

If the allegation of failure to train and supervise applies to Einertson, and we think it probably applies to Sheriff Tietz only, no indication that Einertson had any duty to train others has been provided. Einertson's own affidavit indicates that he had general supervisory responsibility for detectives Busch, Morgan and Pint. However, we have concluded that these detectives have qualified immunity for the acts of seeking and making arrests and questioning children because their conduct was respectively objectively reasonable and not in violation of clearly established legal norms. If the Lallaks' theory is that Einertson had a duty to protect them from the other deputies' alleged violations of their rights, *see contra Rodgers v. Lincoln Towing Service, Inc.*, *supra*, 771 F.2d at 201 (disposition of the claimed predicate violations unfavorably to the plaintiff defeats this allegation). As for the removal of children from their homes, the Lallak children were removed by Charles and Carol Lallak not the sheriff's deputies. Although as a condition of bail the Lallaks were required to forego contact with their children, no connection between any of the deputies and the bail condition is

apparent.

Apart from the facts discussed, Einertson's affidavit reveals that he was the complaining witness against James Rud, and that he approved the decision to arrest Greg Myers and remove the Myers children from their home. We think any connection between these acts, for which we conclude Einertson would have qualified immunity, and any injury to Charles and Carol Lallak is too attenuated to provide the causal connection required for an action under 42 U.S.C. § 1983. *See City of Oklahoma City v. Tuttle*, 105 S.Ct. 2427, 2433, 2436, 2439-40 (1985). For all of these reasons, we reverse the denial of deputy Einertson's motion for summary judgment.

SHERIFF

Scott County Sheriff Douglas Tietz is a defendant in the actions brought by plaintiffs Greg and Jane Myers, Charles and Carol Lallak and Donald and Cindy Buchan. The plaintiffs do not allege that the sheriff personally participated in any deprivation of their constitutional rights, nor can he be liable on a theory of respondeat superior. *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1443 (llth Cir. 1985). hheir theory is that the sheriff failed to intervene to remedy abuses committed by his deputies and by Morris and that he was grossly negligent in training and supervising his deputies. *See Williams* v. Smith, 781 F.2d 319, 323-24 (2d Cir. 1985); *Fundiller v. City of Cooper City, supra*, 777 F.2d at 1443.

We have concluded, as previously stated, that the deputies' conduct in procuring and making arrests was objectively reasonable and that the deputies violated no clearly established constitutional standards in interviewing witnesses and suspected victims and in removing children from the plaintiffs' homes. In addition, the only item of evidence to which the plaintiffs point in support of their claim against Sheriff Tietz is a rough draft of notes prepared by BCA Agent Perron reflecting his memory of an interview conducted with Scott County deputy sheriff David Menden in December 1984. Perron's notes attribute statements to Menden concerning

"usurpation" of power by the prosecutor and unsuccessful efforts by Tietz to "rein in" Morris.

Menden, not a party to this lawsuit, has absolutely repudiated Perron's version of this interview and has unequivocally denied making these statements. Perron's draft was concededly dictated from memory of an interview in which he took no notes. The Perron draft does not appear to have been incorporated into the *Report on Scott County Investigations*, Hubert H. Humphrey III, Attorney General (Feb. 12, 1985). We therefore doubt the admissibility of the notes as substantive evidence.[22] *See* FED. R. FVID. 801(d)(2) (admission by party- opponent), 8Ol(d)(l)(A) (prior inconsistent statement), 803(8)(C) (public report of investigation). Moreover, even if Perron were to testify at a trial that Menden made the statements attributed to him, the Menden opinions amount to no more than assertions of negligent failure by the sheriff to defend his office against encroachment by the prosecutor. As we discuss *infra*, allegations of negligent conduct do not state a claim for any due process violation. We therefore reverse the district court's denial of the sheriff's motions for summary judgment.

JORDAN POLICE OFFICER NORRING

The district court dismissed the claim by the Lallak plaintiffs against Jordan police officer Larry Norring for lack of a submissible issue of fact concerning any act by Norring which caused the arrest and prosecution of Charles and Carol Lallak. We agree.

The Lallaks assert that Norring had two motives for injuring them, first an alleged personal dislike of Greg Myers and second, an alleged desire to retaliate for the Lallaks' efforts in the spring and summer of 1984 to promote an investigation of the Jordan police department. The Lallaks, however, have failed to identify any actual acts by Norring which contributed to their arrest and

---

[22] "Without a showing that admissible evidence will be available at trial, a party may not rely on inadmissible hearsay in opposing a motion for summary judgment." *Pink Supply Corp. v. Hiebert, Inc.*, 788 F.2d 1313, 1319 (8th Cir. 1986).

criminal charges. As an example, they characterize the May 1984 reports by A. Myers (twelve year old male) about events at the Quarry Campgrounds as the moving force in the Lallaks' arrest. However, they do not suggest that Norring had any connection with those reports which were provided to deputies Busch and Pint, guardian Paul Thomsen and therapist Tom Price.

As we have previously stated, broad conclusory allegations of conspiratorial purpose and involvement, without factual specificity or record support, are properly dismissed at a pretrial stage. Apart from the lack of evidence of his participation in a conspiracy, no causal connection between Norring and the Lallaks' arrest and prosecution is discernible from the pleadings or the materials which have been provided to supplement the pleadings. "Causation is an essential element of a section 1983 cause of action." *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). We therefore affirm the dismissal of the Lallaks' claim against officer Norring.

GUARDIANS, THERAPISTS, ATTORNEY

Diane Johnson, John Manahan and Paul Thomsen are attorneys engaged in the practice of law in Minnesota. After the initiation of neglect proceedings, the family court pursuant to MINN. STAT. ANN. § 260.155(4) (West 1982 and Supp. 1987) appointed Johnson and Manahan to serve as guardians ad litem for the Brown, Buchan and Rawson children and appointed Paul Thomsen as guardian for the Bentz and Myers children. The guardians participated in family court hearings, monitored and attended interviews between children and law enforcement personnel, sought the appointment of therapists for their wards, and made recommendations to the court concerning visitation with parents and participation in criminal proceedings.

Michael Shea and Leslie Faricy are licensed psychologists practicing in Minnesota. Shea is the sole proprietor of Michael Shea & Associates, P.A. and employs Faricy. Shea and Faricy provided psychological evaluations of and therapy to the Bentz children by order of the family court pursuant to MINN. STAT. ANN. §

260.151(1) (West 1982). They concluded that the three Bentz children were victims of sexual abuse, reported their opinions to the family court and recommended continuation of foster care and therapy.

Thomas Price is a social worker/therapist in association with Phipps-Yonas & Price, P.A. He was designated by the family court to determine the therapeutic needs of the Myers children. He is not a licensed "physician, psychiatrist, or psychologist," which section 260.151(1) expressly authorizes the family court to appoint for purposes of examining a minor within its jurisdiction, and he provided therapy rather than merely recommending it. Nevertheless, the family court appointed him and, with knowledge of his professional qualifications and counseling activities, the court repeatedly overruled motions by Greg and Jane Myers seeking Price's removal. Price actively questioned the two older Myers children in crucial interviews between those children and law enforcement personnel. He also reported his opinions to the family court and law enforcement personnel that the children had been sexually abused by their parents and other plaintiffs in these cases.

Susan DeVries is a licensed, practicing psychologist. Her affidavit and that of the guardian for the Buchan children state that DeVries was retained pursuant to the family court's direction to the guardian to obtain a psychological evaluation. Moreover, she was paid in the same manner as the appointed therapists. However, no formal court order issued appointing her, and the district court considered the origin of her professional involvement with the Buchan children a fact question. DeVries met with the Buchan children (aged five, two and one-half and twenty months), provided a report in which she concluded that the two older children showed signs of sexual abuse, and testified before the family court.

Wright Walling was the court-appointed counsel for S. Rawson and, when their interests did not conflict, her guardian Diane Johnson. Walling is generally alleged to have participated in the continued presence of S. Rawson in foster care with limited parental visitation.

Summary judgment was warranted in favor of each of these

defendants on a number of bases. As previously discussed, the plaintiffs have not succeeded in pleading or supporting a colorable claim of conspiracy. In particular, they have provided virtually no factual specificity in their complaints as to the guardians, therapists and appointed attorney. Moreover, the voluminous record in these cases lacks facts or inferences suggesting any mutual agreement between these professionals and others to engage in conduct in violation of the plaintiffs' rights. The guardians, therapists and attorney, like other defendants, questioned children concerning whether abuse had occurred and reported the results of their inquiries.

Very few facts accompany even the charges of improper questioning. In the case of Susan DeVries, for example, no factual particularity at all is offered concerning any objectionable interrogation techniques. Absent any information concerning improper questioning methods, we are at a loss to understand how a psychological evaluation or therapy can be accomplished for a juvenile suspected victim of sexual abuse if questioning itself is not permitted.

At the very least, the guardians, therapists and appointed attorney are protected by qualified immunity for the questioning function on the same basis as the deputy sheriffs previously discussed. If clearly established constitutional norms govern this conduct, they have not been cited to us.

In addition, the guardians, therapists and the attorney have absolute immunity for any damage claims based on the function of testifying before the family court. *See Briscoe v. LaHue*, 460 U.S. 325, 335-41 (1983). We think the immunity extends beyond oral testimony to providing their reports and recommendations to the family court.

We also agree with the district court that nonjudicial persons who fulfill quasi-judicial functions intimately related to the judicial process have absolute immunity for damage claims arising from their performance of the delegated functions. *See, e.g., Demoran v. Witt*, 781 F.2d 155, 157 (9th Cir. 1986) reasoning that probation officers serve a function integral to the judicial process when they

prepare presentence reports for a judge. In that capacity they "act as an arm of the sentencing judge" in light of the judge's request that they perform the function, the statutory authority for this delegation of duty and the judge's use of the report in performing judicial duties, i.e., sentencing decisions. *See also Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir. 1984) (psychologist, psychiatrists, guardian ad litem); *Lawyer v. Kernodle*, 721 F.2d 632 (8th Cir. 1983) and cases cited therein (pathologist appointed to assist a coroner); *Ashbrook v Hoffman*, 617 F.2d 474 (7th Cir. 1980) (court-appointed partition sale commissioners); *Wagner v. Genesee County Board of Commissioners*, 607 F.Supp. 1158 (E.D. Mich. 1985) ("friend of the court" integrally involved in family court proceedings).

With the possible exception of Susan DeVries whose appointment is in dispute, the other therapists, guardians and attorney were appointed to fulfill quasi-judicial responsibilities under court direction. The family court was required to determine whether the children in its custody were neglected and to secure appropriate placements. To perform these functions, the court exercised its statutory authority to seek the assistance of experts. *See* MINN. STAT. ANN. §§ 260.151, 260.155(2), (4) (West 1982 and Supp. 1987). The absolute immunity which is accorded persons acting as an integral part of the judicial process protects them from having to litigate the manner in which they performed their delegated functions. We conclude that encompassed within the delegated functions was the authority and perhaps the duty to ascertain what had happened from the children's point of view. Questioning the children was necessary to perform the functions of determining the children's needs, protecting their interests and making recommendations to the family court. Therefore, in the alternative to their qualified immunity for this conduct, the appointed guardians, therapists and attorney have absolute immunity for claims arising from the function of questioning children.

We are less certain whether the absolute immunity which shields these professionals for their role in questioning children extends to reporting the results of their inquiries to law enforcement personnel.

However, if the reporting conduct was beyond the scope of the official duties which the guardians, therapists and attorney were appointed to perform and was Undertaken on their own initiative as private persons reporting suspected criminal acts, then we do not consider this conduct action under color of state law. *See Benavidez v. Gunnell*, 722 F.2d 615, 618 (lOth Cir. 1983) ("We know of no case in which the report of a state crime is action under color of state law under § 1983."). *Accord Tauvar v. Bar Harbor Congregation of Jehovah's Witnesses, Inc.*, 633 F.Supp. 741, 747 (D. Me. 1985), *aff'd*, 787 F.2d 579 (lst Cir. 1986).[23]

A private party who conspires with a state actor, e.g., a prosecutor, may act under color of state law. *Dennis v. Sparks*, 449 U.S. 24, 27-29 (1980). But, as here, in the absence of a sufficiently pleaded conspiracy claim or a genuine factual issue of conspiracy between private parties and state actors, the private individuals were not acting under color of state law for purposes of 42 U.S.C. § 1983 by virtue of the conspiracy claim. *See Malachowski v. City of Keene*, 787 F.2d 704, 710-11 (lst *Cir.), cert. denied*, 107 S.Ct. 107 (1986).

The claims of Coralene Rawson against guardians ad litem Johnson and Manahan and appointed attorney Walling present two additional issues, one concerning family court jurisdiction and the other alleging interference with S. Rawson's religious observances. In September 1984, the family court found S. Rawson to be a neglected child. In October 1984, S. Rawson recanted her prior testimony. In November 1984, the family court vacated its neglect findings and ordered a new trial. (The state Attorney General's office had replaced the county attorney in the family court proceedings, and state representatives opposed the return of S. Rawson to her parents, as did her guardian.) In February 1985, the Minnesota Court of Appeals dismissed Coralene Rawson's appeal from the family court's order for new trial and refused to enter a summary reversal. Coralene Rawson asserts that the family court lacked jurisdiction or power to order a new trial once the prior neglect

---

[23]This conclusion applies as well to Susan DeVries.

findings had been vacated. She also alleges other procedural irregularities.

We "do not review state court civil proceedings under the guise of the Civil Rights Act." *Malachowski v. City of Keene, supra*, 787 F.2d at 708 (citation omitted). Although directed at her daughter's guardians ad litem and appointed attorney, the substance of Coralene Rawson's claims against these defendants amounts to no more than a protest that the family court acted improperly by retaining custody of S. Rawson, ordering a new trial and failing to observe procedural formalities having to do with amending petitions. The irregularities, if any, and rulings by the state courts are not attributable to the defendant guardians and attorney. Nor could these defendants have seized S. Rawson and returned her to plaintiff in disregard of the family court's orders, had they wanted to. Nor did the family court's alleged failure to observe certain procedural rules, if true, result in a clear absence of jurisdiction, creating some sort of jurisdictional hiatus in the family court during which the defendants could or should have seized the child on behalf of her mother. Moreover, plaintiff has offered no source from which a legal duty to do so could be inferred.[24]

In addition, plaintiff seeks to hold the guardians liable for an alleged failure to ensure that S. Rawson attended Jehovah's Witness services while in foster care. Although phrased in terms of impeding first amendment rights to the free exercise of religion, once again the focus of the claim is to hold these defendants responsible for a family court decision that S. Rawson did not have to attend services if she did not want to. We question whether these additional allegations by Coralene Rawson state a section 1983 claim for relief. If they do, however, defendants Johnson, Manahan and Walling are shielded by qualified immunity from further litigation of these claims in the absence of any identified legal duty to behave otherwise or any clearly established legal rights violated by the alleged conduct.

---

[24]In any event, violation of a state statute limiting the jurisdiction of a state court is not the automatic equivalent of violation of the federal Constitution. Section 1983 actions do not lie to vindicate rights derived solely from state law.

NEGLIGENCE

The alleged failure by Sheriff Tietz to supervise his deputies is characterized by plaintiffs as "grossly negligent." In addition, various plaintiffs allege that all defendants, in addition to conspiring against them, were "grossly negligent" in contributing to their prosecution and the removal of children from their homes.

The Supreme Court has recently concluded that negligent conduct by state actors does not implicate any aspect of the due process clause. *Daniels v. Williams*, 106 S.Ct. 662, 663, 665, 666 (1986); *Davidson v. Cannon*, 106 S.Ct. 668, 670, 671 (1986). Thus allegations that the sheriff or other defendants deprived plaintiffs of procedural or substantive due process interests through negligent or "grossly negligent" conduct does not state a claim under 42 U.S.C. § 1983. *See Davidson, supra*, 106 S.Ct. at 670, 671:

> In *Daniels*, we held that the Due Process Clause of the Fourteenth Amendment is not implicated by the lack of due care of an official causing unintended injury to life, liberty or property. In other words, where a government official is merely negligent in causing the injury, no procedure for compensation is constitutionally required. * * * As we held in *Daniels*, the protections of the Due Process Clause, whether procedural or substantive, are just not triggered by lack of due care by * * * officials.

STATE LAW

Certain plaintiffs have alleged that the defendants violated various provisions of state law. Some of the state legislation, such as Human Services Department regulations and a statutory provision calling for a "Tennessen warning" by social workers,[25] do not apply to any of the defendants whose actions are before us on appeal. We examine the remaining provisions to determine whether their al-

---

[25]"This warning is part of the Government Data Practices Act, Minn. Stat. §§ 13.01-.88, and it requires social workers to, inter alia, inform interviewees whether they may refuse to answer questions and why information is being sought." *In re Scott County Master Docket, supra*, 618 F.Supp. at 1564.

leged violation bears on the immunity defenses at issue in these appeals.

Davis v. Scherer, 104 S.Ct. 3012 (1984) indicates that unless the rights which form the basis of the plaintiffs' civil rights claims were conferred by state law, a violation of state law is neither cognizable under section 1983 nor results in forfeiture of immunity for the alleged violation of rights which have independent constitutional origin. *Id.* at 3019-20, 3020 n.12. In the plaintiffs' cases, the rights asserted are all of federal constitutional origin, such as the fourth amendment right to be free from arrest without probable cause, the liberty interest in the family unit and fair trial, due process rights. None of these interests is conferred by Minnesota legislation.

In the case of therapist Tom Price, for example, an alleged violation of state legislation prohibiting practicing psychology without a license in no sense bears on the Myers', Lallaks' and Buchans' claims against this defendant. Their objection to his conduct concerns his role in questioning children and allegedly eliciting fabricated accusations against themselves, an objection which is unrelated to state licensing requirements.

Similarly, MINN. STAT. ANN. § 626.556 (West 1983 and Supp. 1987) imposes reporting duties on persons with knowledge of child abuse or neglect. Subdivision 10 of the statute directs law enforcement and local welfare agencies, upon receipt of a report that a family member has abused or neglected a child, to investigate, conduct assessments, maintain records and offer "protective social services for purposes of preventing further abuses, safeguarding and enhancing the welfare of the abused or neglected minor, and preserving family life whenever possible." If this provision even applies to any defendant currently before us, and even if the foregoing language can be construed as some sort of command to avoid fragmenting families, the statute is not the source of the liberty interest in the family unit which the plaintiffs have sued to vindicate. At most, the statute establishes guidelines to be followed as a matter of state law and neither confers nor embodies any constitutionally-protected right asserted by the plaintiffs. *See generally Coleman v. Frantz*, 754 F.2d 719, 729-30 (7th Cir. 1985) (state

statutes did not bear on plaintiff's claim of constitutional right and created inadequately defined duties; thus sheriff Lost no immunity for violation of either constitutional or statutory rights allegedly resulting from noncompliance with state law).

MINN. STAT. ANN. § 260.165(1)(c)(2) (West 1982), previously discussed, authorizes police officers to take a child into immediate custody upon reasonable belief that present surroundings or conditions endanger the child. The plaintiffs who assert that the deputy sheriffs vioiated this statute have not identified the nature of the alleged violation. Presumably the deputies' "reasonable belief" is at issue. Because the claims against the deputies for removing children from the plaintiffs' custody are founded on the constitutional interest in maintaining the family, any violation of section 260.165(1)(c)(2) would not bear upon nor defeat immunity for the constitutional claim.[26] This state statute does not give rise to the rights which plaintiffs assert were violated when their children were removed from their homes, brought before the family court and made the subject of neglect proceedings. This and the other state laws discussed do not provide the basis for the federal claims sued upon, are not independently actionable under 42 U.S.C. § 1983 and result in no loss of immunity for the federal claims which are cognizable under section 1983. *Davis v. Scherer*, *supra*, 104 S.Ct. at 3020 n.12; *Pollnow v. Glennon*, 757 F.2d 496, 501 (2d Cir. 1985).

Finally, Coralene Rawson's complaint alleges that various defendants including her daughter's guardians ad litem, Diane Johnson and John Manahan, and court-appointed attorney Wright Walling, violated and conspired to violate various Minnesota criminal provisions concerning kidnapping of children, damage and trespass to property, being dangerous offenders and aiding and abetting criminal acts. No authority whatever has been provided to the effect that these statutes create a cause of action enforceable by private individuals under 42 U.S.C. § 1983 or otherwise.

In summary, in the cases before us on appeal, we affirm the

---

[26]In any case, we have already held that reasonable officials could have had such a "reasonable belief."

orders of the district court granting summary judgment in favor of Wright Walling, Diane Johnson, John Manahan, Paul Thomsen, Thomas Price, Phipps-Yonas & Price, P.A., Michael Shea, Leslie Faricy, Shea & Associates, P.A., and Larry Norring. We reverse the orders of the district court denying summary judgment to Susan DeVries, R. Kathleen Morris, Douglas Tietz, Michael Busch, Patrick Morgan, Norm Pint and David Einertson. We remand for proceedings consistent with our decision.

FLOYD R. GIBSON, Senior Circuit Judge, concurring.

I concur in the court's opinion and judgment, but write separately to express my misgivings with the manner in which the child abuse cases were handled by the Scott County authorities. The detailed accounts of sexual abuse given by the children required the authorities to act, and their action, as the court holds today, is protected. The children's accounts are so startling and egregious, however, that it is difficult to accept the prosecutor's dismissal of the charges against the parents and other parties charged. The charges were dismissed by the prosecutor allegedly to avoid compromising an investigation of greater magnitude. Yet even after this investigation was no longer a concern, the charges were not reinstated. The children's accusations, if true, demand the prosecution of the guilty parties. The prosecutor's action in dismissing the charges leaves this shocking and abusive affair in limbo.

On the other hand, if, as alleged, the prosecutor fabricated charges, coerced testimony, and withheld and destroyed evidence in pursuing the accusations against the plaintiffs, her conduct demeaned our system of justice and undermined the faith placed in that system by the people of Scott County. Child abuse cases should be handled cautiously from the investigative stage to the final stage, keeping in mind the rights of both the children and the parents. These child abuse cases were not handled in such a manner.

I also express concern over the considerable difficulty in ascertaining what really happened in Jordan, Minnesota during 1983-84. That difficulty may be attributable to the nature of this case. Some

cases are more difficult than others, but cases involving alleged sexual abuse of children are extremely perplexing, and even more troublesome when the children's parents are the alleged source of that abuse. The difficulty also may be attributable to the circumstances of this particular case. Some children were interviewed numerous times over several months before they acknowledged that they had been abused. Evidence was withheld and destroyed. Ultimately charges were dismissed and some of the children later recanted their accusations.

In any event, I agree with the court's disposition of the plaintiffs' claims against the defendants in this case.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

United States District Court

DISTRICT OF MINNESOTA

In Re: FOURTH DIVISION **CIVIL 3-85-774**

Scott County Master Docket
Greg Myers and Jane Myers, individually and as parents and natural guardians of Andy Myers, Amy Myers and Brian Myers, minors, Plaintiffs,

MEMORANDUM OPINION

v. **CIVIL 4-84-1066**

Scott County and R. Kathleen Morris, Scott County Attorney, Scott County Human Services, and Peg Subby, its Director of Human Services, Thomas Price, and Phipps-Yonas & Price, P.A., Paul Thomsen, Guardian Ad Litem, Doris Wilker Social Worker, and Other Employees of Scott County Human Services Whose Names and Titles are Unknown, and Douglas Tietz, Scott County Sheriff, Deputy Sheriffs Norm Pint, Patrick Morgan and Michael Busch, and City Council of Jordan, Minnesota, and Alvin Erickson, Jordan Chief of Police,

Defendants.

* * * * *

Duane Rank and Dee Rank,

Plaintiffs,

v. **CIVIL 4-84-1214**

R. Kathleen Morris, individually and as Scott County attorney, Anthony Worm, Dick Mertz, Mark Stromwall, Roland Boegeman and William Knoiarski, individually and as Scott County Commissioners and John Doe Numbers 1 - 15, individually and as employees and agents of Scott County a Political Subdivision of the State of Minnesota, and Scott County,

Defendants.

* * * * *

Charles Lallak and Carol Lallak, husband and wife; and Jeffrey Lallak and Jennifer Lallak, minors, by Charles Lallak and Carol Lallak, their parents and natural guardians,

Plaintiffs,

v. **CIVIL 4-84-1230**

Scott County; Scott County Board of Commissioners; Scott County Attorney's Office; R. Kathleen Morris, Scott County Attorney; Scott County Sheriff's Department; Douglas Tietz, Scott County Sheriff; Michael M. Bush, Scott County Deputy Sheriff; Patrick Morgan, Scott County Deputy Sheriff; David Einertson, Scott County Deputy Sheriff; Norman Pint, Scott County Deputy Sheriff; other employees of Scott County Sheriff's Department whose names and titles are unknown; Scott County Human Services Department; Rachel Paff, Social Worker with Scott County Human Services Department; Other employees of Scott County Human Services Department whose names and titles are unknown; City of Jordan; Jordan City Council; Gail Anderson, former mayor of Jordan; Donald Tillman, Mayor of Jordan; Jordan Police Department; Alvin Erickson, Jordan Police Chief; Larry Norling, Officer with Jordan Police Department; Other employees of Jordan Police Department whose names and titles are unknown; Thomas

L. Price, and Phipps-Yonas & Price, P.A.,

Defendants.

* * * * *

Donald Buchan, Cindy Buchan, individually and as parents and natural guardians of Courtney B. Buchan, Melissa Ellen Buchan and William Donald Buchan, minors,

Plaintiffs,

v. **CIVIL 3-84-1615**

Scott County and R. Kathleen Morris, Scott County Attorney, Scott County Human Services , and Peg Subby, its Director of Human Services, Thomas Price, and Phipps-Yonas & Price, P.A., Michael Shea, and Shea & Associates,P.A., Diane Johnson, Guardian Ad Litem, John Manahan, Guardian Ad Litem, Doris Wilker, Social Worker, Mary Tafs, Social Worker, Judy Dean, Social Worker, Susan Devreis, Psychologist, and Other Employees of Scott County Human Services whose names and titles are unknown, and Douglas Tietz, Scott

County Sheriff, and Deputy Sheriffs Norm Pint, Patrick Morgan, and Michael Busch,

Defendants.

* * * * *

Daniel J. Meger and Wanda Lou Meger, individually and as parents and natural guardians of Brian Meger and Chad Meger, minors,

Plaintiffs,

v. **CIVIL 3-85-138**

Scott County, a Political Subdivision of the State of Minnesota; R. Kathleen Morris, individually and in her official capacity as attorney for Scott County; Scott County Board of Commissioners; Scott County Welfare Department and Margaret Subby, it's Director of Human Services; Scott County Sheriff's Department and it's Deputies, Patrick Morgan and Michael Bush; Doris Wilker, Social Worker, Scott County Welfare Department; Joel Kaufmann, psychologist, Scott County Welfare Department; Jane McNaught, and Center for

Child and Family Therapy; B.A. Bershow, M.D., and Burnsville Family Physicians, P.A.; John Doe and Mary Doe and other employees of Scott County whose names and titles are unknown,

Defendants.

* * * * *

Robert Bentz and Lois Bentz, individually and as parents and natural guardians of Marlin Bentz, William Bentz and Anthony Bentz, minors,

Plaintiffs,

v. **CIVIL 3-85-336**

Scott County; R. Kathleen Morris, Scott County Attorney; Margaret Subby, Scott County Welfare Department/Director of Human Services; Doris Wilker, Social Worker, Scott County Welfare Department; Paul Thomsen, Guardian Ad Litem; Michael Bush, Patrick Morgan and Norman Pint, Scott County Deputy Sheriffs; Michael Shea, Leslie Faricy, Michael Shea and Associates; Earl Barrett; Cindy Christ; and John Doe and Mary

Roe; and other employees of Scott County Human Services whose names and titles are unknown,

Defendants.

* * * * *

Thomas and Helen Brown, individually and as parents and natural guardians of Brandy Brown and Jeff Brown,
Plaintiffs,

v. **CIVIL 3-85-337**

Scott County and R. Kathleen Morris, Scott County Attorney, Scott County Welfare Department and Peg Subby, its Director of Human Services, Susan Phipps-Yonas and Phipps-Jonas & Price, P.A., John Manahan and Diane K. Johnson, Guardian Ad Litems, Doris Wilker Social Worker and other Employees of Scott County Human Services whose names and titles are unknown,

Defendants.

* * * * *

George B. Gould,

Plaintiff,

v. **CIVIL 3-85-506**

County of Scott, State of Minnesota; R. Kathleen Morris, individually, and as Scott County Attorney; City of Jordan, Minnesota, and City of Jordan Police Department; Sheriff of Scott County, State of Minnesota,

Defendants.

* * * * *

John R. Wylde and James William Hunter, Rapoport, Wylde & Nordby, 205 Loring Park Office Building, 430 Oak Grove Street, Minneapolis, MN 55403, for plaintiffs Duane Rank and Dee Rank.

Thomas J. Hunziker, Hanley, Hergott & Hunziker, Suite 1400, 701 Fourth Avenue South, Minneapolis, MN 55415, for plaintiffs Charles Lallak and Carol Lallak.

Michael D. Madigan, Dunkley & Bennett, Suite 1400, 701 Fourth Avenue South, Minneapolis, MN 55415, for plaintiffs Jeffrey Lallak and Jennifer Lallak.

Patrick H. Elliott, Murphy, Blanchar, & Elliott, 7407 Wayzata Boulevard, Minneapolis, MN 55426; Anthony L. Noterman and

David E. Albright, Murphy, Blanchar, & Elliott, P.O. Box 158, Shakopee, MN 55379; for plaintiffs Daniel J. Meger and Wanda Lou Meger, individually and as parents and natural guardians of Brian Meger and Chad Meger, minors.

Robert G. Gubbe, 410 Edina Professional Building, 7250 France Avenue South, Edina, MN 55435, and Robert M. Frisbee (of counsel) 410 Edina Professional Building, 7250 France Avenue South, Edina, MN 55435, for plaintiffs Thomas and Helen Brown, individually and as parents and natural guardians of Brandy Brown and Jeff Brown.

Barry V. Voss, Suite 500 Builders Exchange, 609 Second Avenue South, Minneapolis, MN 55402, and Earl P. Gray, 1300 Northern Federal Building, 386 Wabasha Street North, St. Paul, MN 55102, for plaintiffs Robert Bentz and Lois Bentz, individually and as parents and natural guardians of Marlin Bentz, William Bentz and Anthony Bentz, minors.

Marc G. Kurzman, Kurzman, Manahan & Partridge, 601 Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, for plaintiffs Greg Myers and Jane Myers, individually and as parents and natural guardians of Andy Myers, Amy Myers and Brian Myers, minors, and for plaintiffs Donald Buchan, Cindy Buchan, individually and as parents and natural guardians of Courtney B. Buchan, Melissa Ellen Buchan and William Donald Buchan, minors.

Robert M. Frisbee, Suite 410, 7250 France Avenue South, Edina, MN 55435, for plaintiff George B. Gould.

James T. Martin, Gislason & Martin, P.A., 7600 Parklawn Avenue South, Edina, MN 55435, for defendants Scott County Attorney R. Kathleen Morris, Michael M. Busch, Scott County Deputy Sheriff; Patrick Morgan, Scott County Deputy Sheriff; David Einertson, Scott County Deputy Sheriff; Norman Pint, Scott

County Deputy Sheriff; other employees of Scott County Sheriff's Department whose names and titles are unknown.

Richard J. Chadwick and Jon K. Iverson, Chadwick, Johnson & Condon, P.A., 2000 Northwestern Financial Center, 7900 Xerxes Avenue South, Minneapolis, MN 55431, for defendants Scott County, a Political Subdivision of the State of Minnesota and Scott County Board of Commissioners, and Richard A. Beens (of counsel for Scott County), Steffen, Munstenteiger, Beens, Parta & Peterson, 301 Anoka Professional Building, 403 Jackson Street, Anoka, MN 55303.

Donald F. Hunter, Gislason, Dosland, Hunter & Malecki, 220 Woodbridge Plaza, 10201 Wayzata Boulevard, Minnetonka, MN 55343, for defendants Scott County Human Services; Peg Subby, its Director of Human Services; Doris Wilker, Social Worker; Rachel Paff, Social Worker with Scott County Human Services Department; Mary Tafs, Social Worker; Judy Dean, Social Worker; Joel Kaufmann, psychologist, Scott County Welfare Department; and other employees of Scott County Human Services, whose names and titles are unknown.

Loren M. Barta, Fidelity State Bank Building, P.0. Box 103, New Prague, MN 56071, for defendant Douglas Tietz, Scott County Sheriff.

James O. Redman, Collins, Buckley, Sauntry & Haugh, W-1100 First National Bank Building, St. Paul, MN 55101, and Frederick C. Brown, Robert H. Lynn, Thomas J. Radio, Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., 4344 IDS Center, Minneapolis, MN 55402, for defendants City of Jordan; Jordan City Council; Gail Anderson, former mayor of Jordan; Donald Tillman, Mayor of Jordan; Jordan Police Department; Alvin Erickson, Jordan Police Chief; Larry Norring, Officer with Jordan Police Department; Other employees of Jordan Police Department whose names and titles are unknown.

James F. Roegge and Douglas Muirhead, Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan, 2250 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, for defendants Thomas L. Price, Susan Phipps-Yonas, and Phipps-Yonas & Price, P.A., and Susan Devreis, Psychologist.

Phillip A. Cole and Paul C. Peterson, Lommen, Nelson, Sullivan & Cole, P.A., 1120 TCF Tower, Minneapolis, MN 55402, for defendant Paul Thomsen, Guardian Ad Litem.

James W. Kenney, Geraghty, O'Loughlin & Kenney, 900 Amhoist Tower, St. Paul, MN 55102, for defendants Michael Shea, Leslie Faricy, and Shea & Associates, P.A.

John M. Degnan, Bassford, Heckt, Lockhart & Mullin, P.A., 1520 Pillsbury Center, Minneapolis, MN 55402, for defendants Diane K. Johnson, Guardian Ad Litem, and John Manahan, Guardian Ad Litem.

Mark N. Stageberg, Lommen, Nelson, Sullivan & Cole, P.A., 1120 TCF Tower, Minneapolis, MN 55402, for defendants Jane McNaught, and Center for Child and Family Therapy.

John R. McBride, Donlin and McBride, P.A., 2330 American National Bank Building, St. Paul, MN 55101, for defendants B.A. Bershow, M.D., and Burnsville Family Physicians, P.A.

Earl Barrett, 4310 Portland Avenue South, Minneapolis, MN 55407, pro se.

Virtually all of the defendants in the eight above captioned cases (hereafter Scott County cases) moved for dismissal and/or summary judgment. The Court heard these motions early in the litigation, either prior to or shortly after the commencement of discovery depositions. The Court quickly announced its rulings in terse orders to enable successfully moving defendants to avoid the burdens of

discovery. This Memorandum Opinion sets forth the rationale for those rulings, but it does not deal with *Gould v. County of Scott* (CIVIL 3-85-506). The Court's Memorandum and Order of June 26, 1985 fully explains why the Court granted summary judgment in favor of all the defendants in *Gould*.[1]

I. OVERVIEW

On September 26, 1983, Chris Brown contacted the City of Jordan Police Department because she feared that James Rud had sexually abused her ten-year-old daughter and her eight-year-old son. Jordan Police arrested Rud that same evening on charges of sexually abusing children. The arrest and questioning of Rud set into motion what became known as the "Jordan sex ring investigation." The initial interview with Chris Brown's children led investigators to additional purported victims of sexual abuse. The number of suspects also continued to expand as the investigation proceeded. From the date of Rud's arrest until June 6, 1984, an additional 23 individuals from the Jordan area in Scott County, Minnesota were criminally charged with sexually abusing children. Once charged with sexually abusing children, most parents had their children taken away from them by Scott County officials.

Plaintiffs in the present actions were arrested during a period from January 11, to June 4, 1984. Thomas and Helen Brown were arrested on January 11, 1984; Robert and Lois Bentz were arrested on January 20, 1984; Greg Myers was arrested on February 6, 1984; Jane Myers, Charles and Carol Lallak, and Duane and Dee Rank all were arrested on May 23, 1984; and Donald and Cindy Buchan were arrested on June 4, 1984. At the time of their arrests, these plaintiffs, except for the Lallaks and the Ranks, had their children taken away from them. (The Ranks have no children and the Lallaks removed their children from Scott County prior to their

---

[1] Subsequent to the Court's rulings in the eight Scott County cases, two new Scott County cases were filed: *Kath v. Morris* (CIVIL 3-85-1091) and *Meisinger v. Scott County* (CIVIL 4-85-869). This Memorandum Opinion does not deal with Kath or *Meisinger*.

arrests.) Two other plaintiffs, Daniel and Wanda Meger, were never arrested. The Meger children were separated from their parents on June 5, 1984. Defendants state that this separation was the result of Wanda Meger consenting to voluntary placement of the children with the County, while Wanda Meger contends that she was pressured and misled into signing the placement agreement. *See* Morris aff. ¶ XXXIII, and exh. U; Wilker aff. ¶ XXXVII; Meger aff. ¶ 47-51.

Of all the criminal cases involving the Jordan sex ring, only the Bentz case went to trial.[2] In September of 1984, the jury acquitted the Bentzes of all counts. On October 15, 1984, Scott County Attorney R. Kathleen Morris dismissed the charges against the remaining Jordan sex ring defendants. Morris explained the dismissal of these allegations as necessary to avoid prejudicing an investigation of great magnitude, which was a reference to an investigation of alleged homicides in Scott County. Morris also noted that further criminal trials would harm the children who had to appear as witnesses. Subsequently, state and federal authorities assumed control over further investigations and legal proceedings involving alleged Scott County child abusers. These authorities did not reinstate criminal actions against any of the 21 individuals who had their charges dismissed.

After dismissal of the criminal allegations, the plaintiffs filed the present actions in federal court under 42 U.S.C. § 1983 and various state laws. Plaintiffs who have children also are suing on behalf of their children. The list of defendants varies slightly from case to case, but most defendants are present in more than one lawsuit. All plaintiffs have named Morris and Scott County as defendants. The other defendants in these actions are the Sheriff of Scott County, Douglas Tietz; four Scott County deputy sheriffs; therapists who had contact with the children; a therapist who conducted an adverse examination of two plaintiffs who were criminal defendants; guardians ad litem appointed by the Scott County Family Court to

---

[2] James Rud was the only Jordan sex ring defendant adjudicated guilty. Rud was charged with 108 counts of sexually abusing children, and he pled guilty to ten counts.

protect the interests of children; the Scott County Department of Human Services and individual employees of the department; the Scott County Board of Commissioners; the City of Jordan; the Jordan City Council; the former and current mayor of the City of Jordan; the Jordan Police Department; Jordan Police Chief Alvin Erickson; a Jordan police officer; a foster parent of one of the children; the director of a halfway house in which one of the children stayed; and a doctor who examined some of the children.

II. VIABILITY OF PLAINTIFFS' CLAIMS

The major theme of plaintiffs' allegations against the defendants is that the arrests of various plaintiffs and the separation of parents from their children were improper. Plaintiffs assert that the various defendants acted in concert to bring about the arrests and separations of parents and children, and that the actions of the defendants prolonged the separation of parents and children. Plaintiffs further assert that by repeatedly questioning child witnesses, defendants were able to wear down or brainwash the children into making accusations against adults. In effect, plaintiffs allege that defendants coerced the children to give the responses defendants desired. The thrust of plaintiffs' charges can be further gleaned from the following paragraph, because each complaint, except the Ranks', contains a virtually identical paragraph.

> The aforesaid actions by Defendants were acts in furtherance of a conspiracy. Defendants, and specifically R. Kathleen Morris and her office, were engaged in a publicity campaign against child abuse and incest. Part of this campaign involved the invention by Defendant Morris and others of a "sex ring" in Jordan, Minnesota. Defendants attempted to legitimize this invented "sex ring" by producing a large number of arrests and prosecutions in Jordan for sexual abuse of children. In furtherance of this conspiracy, Defendants recklessly sought out the (plaintiffs) as candidates for prosecution. These arrests were thus made without making any adequate substantiated inquiries regarding the welfare of the Plaintiffs' minor children and without probable cause and in willful disregard of Plaintiffs' rights, privileges and immunities secured by the

United States Constitution and the law and Constitution of the State of Minnesota.

Lallak complaint ¶ 29.

Plaintiffs have brought their lawsuits in federal court because they maintain that defendants' conduct is actionable under 42 U.S.C. § 1983. In order to state a claim under section 1983, a plaintiff must allege that a person acting under color of state law violated a federally protected right. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Individual defendants, in addition to raising the defenses of absolute and qualified immunity, argue that plaintiffs' allegations do not state a claim under section 1983 against them. Before examining the arguments of specific defendants, the Court will determine whether plaintiffs' allegations state a claim for relief in a general sense. Not all of plaintiffs' accusations apply to each defendant, but the following section essentially treats defendants generically to see if plaintiffs' claims contain a viable cause of action against any defendant. The Court will then discuss the arguments unique to specific defendants.

A. Fourth Amendment

Plaintiffs clearly do have a fourth amendment right not to be arrested unless probable cause justifies the arrest. *E.g.*, *United States v. Watson*, 423 U.S. 411, 417-18 (1976); *Carroll v. United States*, 267 U.S. 132, 156 (1925). A person arrested without probable cause, moreover, can seek redress under section 1983. *E.g.*, *Herrera v. Valentine*, 653 F.2d 1220, 1229 (8th Cir. 1981); *Wheeler v. Cosden Oil and Chemical Co.*, 734 F.2d 254, 260 (5th Cir.), *mod. on other grounds*, 744 F.2d 1131 (1984); *Clark v. Lutcher*, 436 F.Supp. 1266, 1268, 1272-73 (M.D. Pa. 1977). The mere fact that a person arrested is later acquitted or the charges against him or her are dropped, however, does not by itself subject the arresting officials to section 1983 liability. *Pierson v. Ray*, 386 U.S. 547, 555 (1967). Neither should arresting officials be liable to arrestees if the officials reasonably believed probable cause did exist. *See Smiddy*

v. Varney, 665 F.2d, 261, 266 (9th Cir. 1981), *cert. denied*, 459 U.S. 829 (1982). Yet a police officer cannot claim he or she simply made a mistake if the officer knew that no probable cause existed, or if the officer was reckless in concluding that probable cause existed. Plaintiffs here assert that the defendants recklessly disregarded the truth in concluding that probable cause existed for plaintiffs' arrests.

Defendants respond that plaintiffs do not have a viable section 1983 claim based on the fourth amendment under any circumstances because independent judicial officers concluded that probable cause did exist for plaintiffs' arrests.[3] The argument runs that even if defendants committed transgressions prior to the judicial officer's probable cause determinations, the judicial officer's findings of probable cause insulate defendants from liability. *Citing Baker v. McCollan*, 443 U.S. 137 (1979). The Court cannot accept this contention. In *Ames v. United States*, 600 F.2d 183, 185 (8th Cir. 1979), the court did state that a grand jury indictment breaks the chain of causation between investigatory activities and resulting harm to a plaintiff, thus insulating the investigators from liability. The court noted, however, that the indictment would not break the chain of causation if the plaintiff alleged acts such as the presentation of false evidence to, or the withholding of truthful evidence from the grand jury. *Ames*, 600 F.2d at 185; *see also Rodriguez v. Ritchey*, 556 F.2d 1185, 1195 (5th Cir. 1977) (en banc) (Hill, J. concurring),[4] *cert. denied*, 434 U.S. 1047 (1978) (officer who maliciously seeks an indictment is not shielded from liability simply by obtaining it). *Ames* dealt with presenting information to a grand jury, but its reasoning should also apply to presenting tainted

---

[3] Arrest warrants were obtained prior to the arrests of all plaintiffs except in the cases of Greg Myers and the Buchans. In these two situations, a judge determined that probable cause existed within two days of the arrests.

[4] Although this statement was made in concurrence, a majority of the panel endorsed this proposition. See *Rodriguez*, 556 F.2d at 11195-96 (Goldberg, J., dissenting); *Dick v. Watonwan County*, 562 F.Supp. 1083, 1099 (D. Minn. 1983), (discussing *Rodriguez*), *rev'd in part on other grounds*, 738 F.2d 939 (8th Cir. 1984).

information to a judicial officer who has to decide whether or not to issue an arrest warrant. *See Dick v. Watonwan County*, 551 F.Supp. 983, 993 (D.Minn. 1982) (section 1983 action could lie against welfare workers who presented information to county attorney where welfare workers failed to corroborate evidence, fabricated evidence, and misleadingly presented information). *Dick v. Watonwan County*, 562 F.Supp. 1083, 1097-98 (D.Minn. 1983) (officials can be subject to section 1983 liability for conduct in procuring court orders) (citing cases), *rev'd in part on other grounds*, 738 F.2d 939 (8th Cir. 1984).

In the Scott County cases, the plaintiffs are arguing that defendants knew or should have known the information presented to judicial officers was false. Such accusations may or may not be true, but they do state a claim under section 1983.

B. Liberty Interest

The other major constitutional violation plaintiffs assert is based on the separation of the parents from their children. Undoubtedly, plaintiffs have a protected liberty interest under the fourteenth amendment in keeping their family unit together. *E.g.*, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977). The United States Court of Appeals for the Eighth Circuit has recently emphasized that "[t]he privacy and autonomy of familial relationships . . . are unarguably among the protectible interests which due process protects. We can conceive of no more important relationship, no more basic bond in American society, than the tie between parent and child." *Bohn v. County of Dakota*, No. 84-5100, slip op. at 4 (8th Cir. Sept. 11, 1985). Plaintiffs claim that the false accusations defendants created caused the separation of children from parents. Defendants do not dispute that plaintiffs

have a protected liberty interest in their family relationships.[5] Nevertheless, defendants contend that even accepting plaintiffs' allegations as true, plaintiffs still do not have a viable section 1983 action for infringement of their liberty interests. Defendants reason that plaintiffs received all the process that was due through the procedures of the Scott County Family Court and the Minnesota Rules of Procedure for Juvenile Court (Minn.R.Juv.P.). Defendants point out that after children were separated from their parents, the parents were entitled to a hearing within 72 hours to determine if probable cause justified the separation. *See* Minn. Stat. § 260.171, subd. 2, Minn.R.Juv.P. 52.04. All parent plaintiffs who had children taken away from them either received or waived these hearings. Parent plaintiffs were also entitled to informal court review of the placement of their children every eight days. Minn.R-.Juv.P., 52.07, subd. 1. Again, the parent plaintiffs either received or waived these informal reviews. In addition, parent plaintiffs had a variety of other procedural rights under the rules. *E.g.*, Minn.R-.Juv.P. 52.04, subd. 4(d) (right to counsel) 52.07, subd. 2 (right to request formal placement review by the court), 57.01-.09 (right to conduct discovery); 59.02 (right to trial on allegations of child abuse within 90 days of denial of the allegations).

Defendants conclude that plaintiffs' rights under state law and procedural rules were sufficient to protect plaintiffs' liberty interest in their families. Relying on *Parratt*, 451 U.S. at 537, defendants argue that because state law provided adequate remedies after plaintiffs' children were removed, (*i.e.*, post-deprivation remedies), the separations of the families were accomplished with due process.

---

[5] The Ranks do not have children, and thus they are not asserting that defendants violated their liberty interest in maintaining the family.

In addition, the Megers and the Lallaks present a unique situation in comparison to the other plaintiffs. Defendants state that Wanda Meger assented to a voluntary placement of the Meger children with Scott County. Yet Meger states that she was pressured and misled into signing the placement agreement. The Lallaks never had their children taken away by Scott County officials because the Lallaks removed the children from the jurisdiction prior to being arrested. The Lallaks claim that defendants' conduct forced the Lallaks to remove their children from the jurisdiction of Scott County. The Lallaks add that once they were arrested, they were legally forbidden from contacting their children.

Although *Parratt* involved a property right, defendants point to cases which have applied the *Parratt* adequate state remedies analysis to liberty interests. *E.g.*, *Thibodeaux v. Bordelon*, 740 F.2d 329, 337 (5th Cir. 1984). In fact, a court in the District of Minnesota recently applied *Parratt* to an intentional deprivation of a liberty interest. *Hanson v. Larkin*, 605 F.Supp. 1020 (D. Minn. 1985) (plaintiff could not sue police officer who allegedly assaulted plaintiff, because state tort action provided adequate state remedies). *But see Quaschnick v. State of Minnesota*, 106 F.R.D. 587 (D.Minn. 1985) (Murphy, J.); *Spell v. McDaniel*, 591 F.Supp. 1090, 1103-07 (E.D.N.C. 1984).

Defendants further draw upon *Ellis v. Hamilton*, 669 F.2d 510 (7th Cir.) (Posner, J.), *cert. denied*, 459 U.S. 1069 (1982). *Ellis* held that due process is not violated "if the state provides reasonable remedies for preventing families from being arbitrarily broken up by local domestic relations officers". *Ellis*, 669 F.2d at 515. *Ellis* does state that due process is not violated if state procedures exist to correct "inevitable errors" or "blunder[s]" of local officials regarding custody matters. *Ellis*, 669 F.2d at 514. Here, however, plaintiffs allege that defendants fabricated sexual abuse charges in reckless disregard for the truth and in willful indifference for plaintiffs' rights. If these allegations are true, defendants' conduct would be more culpable than simple errors or blunders.

Another reason for rejecting defendants' adequate state remedies argument concerns the nature of the liberty interest involved. Plaintiffs' liberty interest in their families being together involves a right protected not only by procedural due process, but also by substantive due process. In *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) the Supreme Court struck down a zoning ordinance which had the effect of prohibiting a grandparent from living with one of her grandsons. The plurality stated that substantive due process protected the right of an extended family to live together. *Moore*, 431 U.S. 502-03. The grandparent in *Moore* was not challenging any procedures (*e.g.*, the method by which the ordinance was adopted or the method by which the grandparent was fined for violating the ordinance). Rather, the grandparent attacked the result

of the ordinance, and the Supreme Court agreed that the result was improper.

The ability of plaintiffs to assert violations of substantive due process is not affected by the availability of adequate state remedies. The *Parratt* analysis of available adequate state remedies applies to only violations of procedural due process and not to violations of substantive constitutional proscriptions. *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, No. 84-1516, slip op. at 12-13 (8th Cir. Aug. 9, 1985); *Lavicky v. Burnett*, 758 F.2d 468, 472 n. 1 (10th Cir. 1985); *Spell*, 591 F.Supp. at 1106-07. Accordingly, plaintiffs' claim that defendants violated plaintiffs' liberty interest in maintaining their family units is a viable claim under section 1983.

In sum, plaintiffs' allegations do in a general sense state claims upon which relief can be granted under section 1983. If plaintiffs' complaints had failed this initial hurdle, then all defendants would have been entitled to summary judgment. Plaintiffs' passing this threshold does not mean, however, that all defendants' summary judgment motions should be denied.

III. PROCEDURAL POSTURE

A. Summary Judgment

Nearly every defendant in the Scott County cases has moved for dismissal (under either Fed.R.Civ.P. 12(b)(6) or 12(c)) or in the alternative for summary judgment pursuant to Fed.R.Civ.P. 56.[6] Numerous parties submitted affidavits and other materials outside the pleadings. Although nearly all defendants did technically move for dismissal as well as summary judgment, defendants typically relied heavily on matters outside the pleadings and spoke only in terms of summary judgment in their arguments. Because the Court did not exclude from its consideration these matters outside the pleadings, the Court must treat defendants' motions as motions for

[6] Defendants also sought to stay discovery pending resolution of their summary judgment motions. The Court denied these motions from the bench on May 22, 1985.

summary judgment. Fed.R.Civ.P. 12(b); *Carter v. Stanton*, 405 U.S. 569, 671 (1972) (per curiam); *Court v. Hall County, Nebraska*, 725 F.2d 1170, 1172 (8th Cir. 1984).

A defendant is not entitled to summary judgment unless the defendant can show that no genuine issue exists as to any material fact. Fed.R.Civ.P. 56(c). Summary judgment is an extreme remedy that should not be granted unless the moving party has established a right to judgment with such clarity as to leave no room for doubt and unless the nonmoving party is not entitled to recover under any discernible circumstances. *E.g.*, *Vette Co. v. Aetna Casualty & Surety Co.*, 612 F.2d 1076, 1077 (8th Cir. 1980). In considering a summary judgment motion, a court must view the facts most favorably to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. *E.g.*, *Hartford Accident & Indemnity Co. v. Stauffer Chemical Co.*, 741 F.2d 1142, 1144-45 (8th Cir. 1984). The nonmoving party may not merely rest upon the allegations or denials of the party's pleading, but must set forth specific facts, by affidavits or otherwise, showing that there is a genuine issue for trial. *Salinas v. School District of Kansas City*, 751 F.2d 288, 289 (8th Cir. 1984).

In most cases, a motion for summary judgment at this early stage of the litigation would be premature. Summary judgment is inappropriate in complex litigation where the party resisting summary judgment has not had the opportunity to conduct and complete discovery. *See Willmar Poultry Co. v. Morton-Norwich Products, Inc.*, 520 F.2d 289, 293 (8th Cir. 1975), *cert. denied*, 424 U.S. 915 (1976); Fed.R.Civ.P. 56(f). Providing a party opposing summary judgment ample opportunity to conduct discovery is especially important when relevant knowledge and facts are exclusively or largely within control of the party moving for summary judgment. *See Willmar Poultry Co.* 520 F.2d at 294; 10A C.Wright, A.Miller & M.Kane, *Federal Practice and Procedure* § 2741, at 545 (1983).

Defendants respond that even though discovery was just commencing when they made their motions, the Court should still require plaintiffs at this juncture to meet defendants' affidavits sufficiently to create genuine issues of material facts. Defendants

reason that other sources have provided plaintiffs with adequate access to information regarding the Scott County cases. These sources include the Minnesota Attorney General's investigation and report, *see Report on Scott County Investigations*, February 12, 1985; criminal discovery associated with the Bentz trial, and other criminal trials which were to take place; and proceedings in Scott County Family Court. Defendants conclude that if information exists to respond to their affidavits, plaintiffs should have already discovered that information.

While defendants are correct that some plaintiffs have had access to relevant information prior to the commencement of discovery in these civil suits, the Court cannot accept defendants' contention that these outside sources preclude plaintiffs from conducting the normal discovery associated with a civil lawsuit in order to rebut defendants' affidavits. *Cf. Marrese v. American Academy of Orthopaedic Surgeons*, 726 F.2d 1150, 1161 (7th Cir. 1984) (en banc) (party opposing summary judgment must be allowed to conduct discovery to resist summary judgment), *rev'd on other grounds*, 105 S.Ct. 1327 (1985). The other sources of information to which defendants point, moreover, have not provided plaintiffs with the opportunity to take depositions of the many witnesses plaintiffs wish to depose.

B. Qualified Immunity

All defendants who are individuals (in contrast to political entities or agencies) claim to be entitled to summary judgment at this stage in the proceedings on the basis of qualified immunity under *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Governmental officials do enjoy a qualified (or good faith) immunity defense in section 1983 actions. *See Harlow*, 457 U.S. at 806. In *Harlow*, the Supreme Court redefined the qualified immunity defense in order to strengthen it. Previously, the qualified immunity defense had a subjective, as well as an objective, component. In order to prevail on the basis of qualified immunity, defendants had to satisfy both aspects. Defendants would meet the objective prong by showing that they did not know, and should not reasonably have known, that their conduct

violated the constitutional rights of plaintiffs. Defendants would meet the subjective prong by establishing that they did not act with malicious intent to deprive the constitutional rights of, or otherwise injure, plaintiffs. *Harlow*, 457 U.S. at 815, *citing Wood v. Strickland*, 420 U.S. 308, 322 (1982). Under this formulation of qualified immunity, plaintiffs could escape summary judgment even in situations where no dispute existed that the defendants' actions were objectively reasonable. *See Harlow*, 457 U.S. at 815. Plaintiffs argued that even if defendants' conduct was objectively reasonable, the defendants' acted with malicious intent. *Harlow*, 457 U.S. at 815. The determination of the defendants' intent was a subjective issue normally for a jury to resolve, and thus summary judgment would often be inappropriate. The *Harlow* Court accordingly eliminated the subjective component of the qualified immunity defense in order to reduce the number of trials governmental officials had to face. *Harlow*, 457 U.S. at 816-17. *See also Davis v. Scherer*, 104 S.Ct. 3012, 3018 (1984).

The *Harlow* Court held "that government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818. The *Harlow* Court stated that under its new definition, many insubstantial claims against government officials could be resolved on summary judgment motions. *Harlow*, 457 U.S. at 818-19. This procedure would spare government officials from unjustifiably being subjected to trials and broad-reaching discovery. *Harlow*, 457 U.S. at 817-18. The Supreme Court elaborated:

> Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment. . . . If the law at that time was not clearly established, an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful. Until this threshold immunity question is

> resolved, discovery should not be allowed. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.

Harlow, 457 U.S. at 818-19.

Defendants point to the language in *Harlow*, which states that a court should not allow discovery until it resolves the threshold immunity question, and conclude that they are presently entitled to summary judgment. *Harlow*, 457 U.S. at 818. *Harlow*, however, provides for defendants obtaining summary judgment *prior* to discovery only in certain situations. *Harlow* states that prior to allowing discovery, a court should determine if the plaintiff is claiming that the defendant violated "clearly established" law. *Harlow*, 457 U.S. at 818. If the law a plaintiff claims a defendant violated was not clearly established at the time of the alleged violation, the defendant is entitled to summary judgment prior to discovery. *Harlow*, 457 U.S. at 818. On the other hand, if the law which plaintiff claims defendant violated was clearly established, a defendant is not entitled to summary judgment prior to discovery. *Harlow*, 457 U.S. at 818-19; *Hobson v. Wilson*, 737 F.2d 1, 26-27 (D.C.Cir. 1984) *cert. denied* 105 S.Ct. 1843 (1985); *Finch v. Wemlinger*, 361 N.W.2d 865, 868-69 (Minn. 1985). Therefore, the only situation in which summary judgment is appropriate prior to discovery, is where the court concludes that even if the defendant committed the alleged violation of plaintiff's rights, those rights were not well established at the time of the violation. *See Hobson*, 737 F.2d at 26-27; *Finch*, 361 N.W.2d at 868-69.[7]

The rights the Scott County plaintiffs claim were violated, however, are clearly established. Plaintiffs assert that they were arrested without probable cause, and this right is beyond question. *See, e.g.*,

---

[7] *Harlow*'s elimination of the subjective component of the qualified immunity defense is not to the contrary. True, plaintiffs can no longer avoid summary judgment merely by asserting defendants acted with subjective bad faith. Yet in cases involving the violation of clearly established rights, plaintiffs are entitled to attempt to show that defendants' conduct, judged by objective standards, violated those rights. In such a situation, a court cannot simply accept defendants' version of the facts as true, rather a court must allow plaintiffs to conduct discovery.

Carroll, 267 U.S. at 156 (1925). Plaintiffs additionally claim that their liberty interests in maintaining their family units were violated, and the right of the family to remain together is also firmly established. *See, e.g., Moore*, 431 U.S. at 502-03 (1977); *Stanley*, 405 U.S. at 551 (1972); *Dennison v. Vietch* 560 F.Supp. 435 442 (D.Minn. 1983).[8] Plaintiffs maintain that defendants violated these well founded rights by fabricating accusations against plaintiffs in reckless disregard of the truth. Fabrication of criminal charges is conduct which is definitely actionable under section 1983. *See, e.g., Beard v. Udall*, 648 F.2d 1264 (9th Cir. 1981) (per curiam). *Cf. Losch v. Borough of Parkesburg*, 736 F.2d 903, 907 (3d Cir. 1984) (filing charges without probable cause and for reasons of personal animosity *clearly* actionable under § 1983). Plaintiffs further assert that defendants coerced witnesses to make the desired accusations. Coercing individuals to give false testimony in order to obtain criminal convictions is conduct clearly actionable under section 1983. *See, e.g., Robichaud v. Ronan*, 351 F.2d 533, 536-37 (9th Cir. 1965); *Lewis v. Brautigam*, 227 F.2d 124, 128-29 (5th Cir. 1955) (both cited in *Imbler*, 424 U.S. at 430 n.31).

Defendants, moreover, have not argued that fabricating accusations against individuals and coercing testimony cannot implicate clearly established rights.[9] Defendants do state that they never engaged in such conduct and that the actions they took cannot be equated with such conduct. In support of their assertions, defen-

---

[8] *Harlow* also declares that a defendant might still be able to prevail on a qualified immunity defense even in cases where the law violated was clearly established, if the defendant could show extraordinary circumstances such that the defendant did not know or should not have known of clearly established rights. *Harlow*, 457 U.S. at 819. The determination that a defendant was not or should not have been aware of well established rights is a factual question and could potentially be an issue for trial; *Hobson*, 737 F.2d at 26-27; *Finch*, 361 N.W.2d at 869. Resolving this issue as a threshold matter prior to discovery, therefore, would be inappropriate.

[9] The concept that such acts could implicate clearly established rights is not legalistic or esoteric. A reasonable lay person would appreciate the wrongfulness of fabricating accusations and coercing witnesses where such acts had the potential of leading to arrests and the separation of parents and children. *See Dick* 562 F.Supp. at 1104.

dants submit numerous affidavits delineating their involvement in the Scott County cases. Defendants conclude that these affidavits, and plaintiffs' failure to rebut them, entitle defendants to summary judgment prior to discovery.

This argument misconstrues what the Court's inquiry should be at this juncture. In a recent pronouncement on the qualified immunity defense, the Supreme Court no longer speaks in terms of "summary judgment" prior to discovery based on *Harlow*; instead, the Supreme Court states that "dismissal" prior to discovery is appropriate if plaintiff's complaint fails to state a claim of violations of clearly established law. *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2816 (1985). *Mitchell* indicates, therefore, that the issue present in evaluating a qualified immunity defense raised prior to discovery is not whether plaintiffs have adequately responded to defendants' affidavits, but rather whether plaintiffs have asserted violations of clearly established rights. Here, plaintiffs have asserted violations of clearly established rights, and thus the existence of defendants' affidavits does not entitle defendants to summary judgment at this time.

Of course, at the close of discovery if plaintiffs cannot rebut defendants' affidavits and evidence sufficiently to create a genuine issue of fact as to whether defendants actually committed the alleged transgressions, then defendants may be entitled to summary judgment. *See Mitchell*, 105 S.Ct. at 2816. In evaluating defendants' summary judgment motions made at the close of discovery, if any, the Court will look to the objective reasonableness of defendants' conduct. At this point if no genuine factual issues exist regarding whether defendants' actions were objectively reasonable, then defendants will be entitled to summary judgment. *Mitchell*, 105 S.Ct. at 2816.

IV. SPECIFIC DEPENDANTS

A. County Attorney Morris

All plaintiffs have named R. Kathleen Morris as a defendant. Defendant Morris is the duly elected Scott County Attorney. As Scott County Attorney, Morris (with the aid of her staff) prepared

and signed the criminal complaints against the plaintiffs who were arrested. Children of the arrested plaintiffs[10] were separated from their parents as the result of neglect petitions brought by the Scott County Human Services Department (HSD). *See* Minn. Stat. § 260.133. Morris reviewed, approved, and signed these neglect petitions.

Morris states that in the early stages of the Jordan sex ring investigation (*i.e.*, fall and early winter of 1983) her involvement was limited to drafting criminal complaints, making court appearances, and contacting law enforcement personnel regarding new information in previously charged criminal cases. Morris aff. ¶ VII. Morris acknowledges that she occasionally met child witnesses, but maintains that she did not conduct substantive interviews with child witnesses until she began preparing for upcoming criminal trials. These trial preparation interviews commenced after February, 1984. Morris aff. ¶ VII. Morris subsequently conducted the prosecution of the Bentzes in August and September of 1984. The jury acquitted the Bentzes on September 19, 1984. On October 15, 1984, Morris announced her decision to dismiss the charges against the 21 remaining Scott County residents facing sexual abuse allegations.

Morris portrays her role in the Jordan sex ring cases as only that of a prosecutor. She states that she had minimal involvement with the investigation and that she had substantive contact with child witnesses only in the context of preparing for upcoming trials. Plaintiffs strongly contest Morris' characterization of her role in these cases. Plaintiffs contend that Morris assumed control of the investigation, and they argue she was thus performing duties outside of prosecutorial functions. Plaintiffs claim that Morris, acting in concert with the other defendants, used the investigation to fabricate accusations of child sexual abuse against the adult plaintiffs. Purportedly, Morris directed an investigaion which recklessly sought out plaintiffs as candidates for prosecution in willful disregard of plaintiffs' rights. Specific transgressions include repeated interviews of child witnesses in order to coerce them into making

---

[10] For somewhat atypical situations see *supra* note 5.

accusations, destruction of evidence, and withholding of exculpatory evidence. Apparently, plaintiffs claim that Morris personally performed some of these acts, and that she directed other defendants to commit other acts.

Defendant Morris denies all of plaintiffs' allegations. Morris argues, moreover, that even assuming the truth of plaintiffs' allegations, she is absolutely immune from suit under section 1983 because all of her alleged transgressions involve acts within her role as a prosecutor. Morris adds that the defense of qualified immunity also entitles her to summary judgment at this juncture.

1. Prosecutorial Immunity

While all governmental officials enjoy the defense of qualified immunity in section 1983 actions, only a limited number of officials can rely on absolute immunity. *See Ray v. Pickett*, 734 F.2d 370, 371-72 (8th Cir. 1984). Prosecutors are one of the select few governmental officials who may be able to assert absolute immunity. *Imbler v.Pachtman*, 424 U.S. 409, 427 (1976). Prosecutors, however, do not enjoy absolute immunity for every action they undertake. In *Imbler*, the Supreme Court held only that a prosecutor was absolutely immune in initiating a prosecution and presenting the state's case. *Imbler*, 424 U.S. at 431. The Supreme Court reasoned that these prosecutorial functions were "intimately associated with the judicial phase of the criminal process" and thus warranted absolute immunity. *Imbler*, 424 U.S. at 430. The *Imbler* Court, while granting absolute immunity to the prosecutor as an advocate, declined to decide whether the prosecutor acting as an administrator or an investigator was entitled to absolute immunity. *Imbler*, 424 U.S. 430-31; *Ray*, 734 F.2d at 374.

In the Eighth Circuit, the rule regarding prosecutorial immunity is clear. Prosecutors enjoy absolute immunity only for actions within the scope of their prosecutorial duties. *Smith v. Updegraff*,

744 F.2d 1354, 1364 (8th Cir. 1984).[11] Thus, prosecutors can assert absolute immunity for their prosecutorial functions, but not for their administrative or investigative duties. *Dick v. Watonwan County*, 551 F.Supp. 983, 992 (D.Minn. 1982). For actions taken in these latter roles, prosecutors still can assert the defense of qualified immunity, just like any other public official. *See Imbler*, 424 U.S. at 430.

Accordingly, the central issue in determining whether Morris is entitled to absolute immunity involves classifying her alleged transgressions as prosecutorial, administrative, or investigative. The *Imbler* Court recognized that "[d]rawing a proper line between these functions may present difficult questions . . . ." *Imbler*, 424 U.S. at 431 n.33; *accord Wilkinson v. Ellis*, 484 F.Supp. 1072, 1083 (E.D.Pa. 1980). The determination of whether a prosecutor's actions were prosecutorial or investigatory sometimes requires a limited factual inquiry. *Forsyth v. Kleindienst*, 599 F.2d 1203, 1215 (3d Cir. 1979), *cert. denied*, 453 U.S. 913 (1981); *see also Bushouse v. County of Kalamazoo*, 93 F.R.D. 881, 884 (W.D.Mich. 1982). Of course, permitting a factual inquiry on the issue of whether actions were prosecutorial or investigatory dilutes somewhat the protection of prosecutorial immunity, but this dilution may be necessary in some cases. *Forsyth*, 599 F.2d at 1215.

a. General Allegations that Morris Acted as an Investigator

Plaintiffs assert that defendant Morris is not entitled to absolute immunity because many of her alleged transgressions involved her acting in an investigative role. For instance, Morris and others supposedly used suggestive and coercive interviewing techniques to elicit the desired responses from children, *i.e.*, that adults had sexually abused them. Plaintiffs claim that children often stated

---

[11] This rule is widely accepted throughout the lower courts. *Bushouse v. County of Kalamazoo*, 93 F.R.D. 881, 883 (W.D.Mich. 1982). See *also* Note, *Supplementing the Func- tional Test of Prosecutorial Immunity*, 34 STAN.L.REV. 487, 492 (1982).

that they were not sexually abused, but that interviewers suggested, cajoled, rewarded, and simply wore down the children until they emitted the correct response.

If Morris' interviews of children were in fact investigatory (as opposed to in preparation for trial) then absolute immunity may not cloak Morris for her actions during the interviews. In *Imbler*, the Supreme Court "recognized that the duties of the prosecutor in [her] role as advocate for the State involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom." *Imbler*, 424 U.S. at 431 n.33. The Court further noted that "[p]reparation, both for the initiation of the criminal process and for a trial, may require the obtaining, reviewing, and evaluating of evidence." *Imbler*, 424 U.S. at 431 n.33. The Court acknowledged, however, that at some point a prosecutor begins to function in roles other than as an officer of the court. *Imbler*, 424 U.S. at 431 n.33.

Preliminary evidence gathering which may blossom into potential prosecutions is investigatory activity outside the scope of absolute immunity. *Rex v. Teeples*, 753 F.2d 840, 844 (10th Cir. 1985), *citing McSurely v. McClellan*, 697 F.2d 309, 320 (D.C.Cir. 1982) (per curiam) and *Marrero v. City of Hialeah*, 625 F.2d 499, 505 (5th Cir. 1980), *cert. denied*, 450 U.S. 913 (1981). The *Rex* court held that a prosecutor's interrogation of a general suspect was police-type or investigatory work not entitled to absolute immunity. *Rex*, 753 F.2d at 844. The *Marrero* court reasoned that a prosecutor who assists, directs, or participates with police in gathering evidence prior to an indictment acts as an investigator rather than a prosecutor. *Marrero*, 625 F.2d at 505.[12]

Here, plaintiffs assert that Morris was acting in an investigatory role, and they have provided indications that defendant Morris actually took over the Jordan sex ring investigation at an early stage. In support of this assertion, a number of plaintiffs point to the December 28, 1984 rough notes of Minnesota Bureau of Criminal Apprehension (BCA) agent Ray Perron (hereafter Perron

---

[12] The court stated, however, that some preindictment activities, such as interviewing grand jury witnesses, would constitute prosecutorial activities. *Marrero*, 625 F.2d at 505.

notes). Scott County deputy sheriff Menden allegedly told Perron that Morris had "actually usurped [Scott County Sheriff Tietz'] power by transferring [children's] interviews to her office." Perron aff., Perron notes at 4. Supposedly, Menden further stated that Morris "took charge of calling the children in for interviews" and that the "bulk of the interviewing" of children would take place in Morris' office. Peron aff., Perron notes at 2. Menden concluded that Morris' work in conducting interviews "was more in the investigative area than prosecutorial area." Perron aff., Perron notes at 4.

Deputy Menden did not provide a time frame for when Morris allegedly began conducting child interviews, but Jordan police officer Larry Norring did.[13] FBI special agent Erwin interviewed Norring on December 19, 1984, and Erwin later summarized the interview in a report dated December 27, 1984 (hereafter Erwin Report). Norring purportedly stated that Morris "got actively involved in the investigation around November 1983."[14] Erwin Report at 2. Norring further indicated that Morris or members of her staff personally began interviewing children in the spring. Erwin Report at 2. The reference to spring must have been the spring of 1984, because the spring of 1983 was prior to James Rud's September, 1983 arrest.

Deputy Menden has, however, submitted an affidavit in which he denies having made the statements concerning Morris' usurpation of power which Perron attributes to him. Menden aff. ¶ 6. In addition, Morris claims that she was not conducting interviews of children in the fall and early winter of 1983. Morris aff. ¶ VII. She states that during that period law enforcement officers used her offices for interviews because of space limitations elsewhere. *See* Morris aff. ¶ VII. Morris notes that she would meet the children at these interviews, but she maintains that she did not conduct any substantive interviews of the children. According to Morris, she began meeting and interviewing child witnesses in preparation for

---

[13] Norring is named as a defendant in *Lallak*.

[14] The arrests of plaintiffs range from January 11, 1984 to June 4, 1984.

upcoming trials after February of 1984. Morris aff. ¶ VII.

The Court cannot, however, simply accept defendant Morris' version of the facts at this juncture. *See Hartford Accident & Indemnity Co. v. Stauffer Chemical Co.*, 741 F.2d 1142, 1144-45 (8th Cir. 1984). Plaintiffs have alleged that Morris acted in an investigatory role, and plaintiffs do provide some support for their contentions. If Morris were directing the Jordan sex ring investigation, and she instructed others to engage in improper acts, Morris would not be entitled to absolute immunity. A prosecutor who directs illegal investigatory activities is not cloaked by absolute immunity even if the prosecutor did not personally perform the improper acts. *See Robichaud v. Ronan*, 351 F.2d 533, 537 (9th Cir. 1965); *cf. Butz v. Economou*, 438 U.S. 478, 505-06 (1978). Accordingly, the Court cannot conclude at this time that all of Morris' alleged transgressions involved activities within her prosecutorial role.

b. Conspiracy

Another allegation which could constitute a transgression outside of Morris' prosecutorial duties involves a charge of conspiracy. Plaintiffs allege that Morris was engaged in a publicity campaign against child abuse and incest. Morris purportedly invented the Jordan sex ring in order to further the publicity campaign. Morris supposedly attempted to legitimize the existence of the sex ring by producing a large number of arrests and prosecutions for child sexual abuse. Plaintiffs claim that Morris recklessly sought out plaintiffs for arrest in full disregard of plaintiffs' rights. *See, e.g.*, *Lallak* Complaint ¶ 29.

If Morris was directing a conspiracy to recklessly seek out plaintiffs for arrest, she would not be entitled to absolute immunity. In *Smith*, 744 F.2d 1354 (8th Cir. 1984), a prosecutor had hired an individual to "get [the plaintiff] no matter what," including illegal means and through framing the plaintiff. *Smith*, 744 F.2d at 1364. The prosecutor also threatened the plaintiff, a deputy sheriff, with prosecution if the plaintiff attacked the sheriff's office during the plaintiff's discharge hearing. *Smith*, 744 F.2d at 1364. The Eighth

Circuit concluded that these examples of the prosecutor's conduct were "more than sufficient" to establish that the prosecutor was acting beyond the scope of his prosecutorial duties. *Smith*, 744 F.2d at 1364.

Other cases indicate that a prosecutor's involvement in a conspiracy to coerce guilty pleas are actions outside the scope of prosecutorial duties. *Robichaud*, 351 F.2d at 537; *Lewis v. Brautigam*, 227 F.2d 124, 128-29 (5th Cir. 1955). (The *Imbler* Court cited both *Robichaud* and *Lewis* as examples of acts of a prosecutor not entitled to absolute immunity. *Imbler*, 424 U.S. at 430 n.30.) In *Lewis*, the prosecutor had allegedly ordered police officers to extort a guilty plea, which the police officers did through threats, intimidation, and promises of rewards directed at the plaintiff. The court concluded that if the prosecutor had in fact directed the police officers to conduct such activity, the prosecutor would not be entitled to absolute immunity. The *Robichaud* court similarly held that if a prosecutor directed police officers to intimidate a suspect into confessing, the prosecutor was acting as a police officer (*i.e.*, an investigator) and not in a prosecutorial capacity. *Robichaud*, 351 F.2d at 534, 537.

By contrast, if Morris simply did a bad job in deciding to charge plaintiffs, she is entitled to absolute immunity. Courts uniformly agree that a prosecutor is entitled to absolute immunity for failing to adequately investigate accusations against a defendant before charging the defendant. *Dick*, 551 F.Supp. at 992; *see also Henzel v. Gerstein*, 608 F.2d 654, 657 (5th Cir. 1979). Morris would also be protected by absolute immunity for basing her decision on whether or not to initiate charges against the plaintiffs on improper motives. *Jennings v. Shuman*, 567 F.2d 1213, 1221-22 (3d Cir. 1977); *see also Imbler*, 424 U.S. at 422, 430-34 (decision to initiate proceedings is absolutely immune).

Yet, *Smith*, *Robichaud*, and *Lewis* involved something more than a prosecutor doing a bad job, making an improperly motivated decision to file charges, or presenting false evidence at trial. Those cases all involved prosecutors taking affirmtive steps to fabricate a case against someone. Nevertheless, defendant Morris points to

Rose v. Koch, 465 F.Supp., 1157, 1159-60 (E.D.N.Y. 1979) for the proposition that a prosecutor's fabricating evidence is absolutely immune. The *Rose* court acknowledged that a prosecutor is absolutely immune for presenting false evidence at trial. *Rose*, 465 F.Supp. at 1159, *see also Butz*, 438 U.S. at 517. As far as the allegation that the defendants in *Rose* concocted and fabricated evidence by suborning perjury and otherwise, the *Rose* court simply stated that the plaintiff had not specifically alleged that the prosecutor defendants took part in those activities. *Rose*, 465 F.Supp. at 1160. The court indicated that such activities by prosecutors might have constituted investigative acts. *Rose*, 465 F.Supp. at 1160. *Rose*, therefore, does not stand for the proposition that a prosecutor is absolutely immune from charges of fabricating a case. Even if *Rose* stood for that proposition, the Eighth Circuit's decision in *Smith* would negate *Rose*'s precential value.

If Morris really did orchestrate the fabrications of cases, she would have been acting in an investigatory role. Such allegations involve more than simply preparing witnesses for trial or doing the necessary investigation upon which to base a decision to file charges. *Smith*, *Robichaud*, and *Lewis* further indicate that if Morris directed police officers to fabricate evidence, then she would have been acting in an investigatory role.

c. Destruction of Evidence

Plaintiffs additionally allege that Morris ordered the destruction of evidence in the criminal cases and that she personally destroyed evidence herself. Such acts, contend plaintiffs, are not protected by absolute immunity. No dispute exists that detective (and defendant) Norm Pint video taped an interview of the two oldest Myers children on May 22, 1984 at the scene of alleged child sexual abuse, the Quarry Camp Grounds, and that video tape was later erased. Defendant Morris points to four affidavits which state that the video tape contained nothing exculpatory in relation to charges against the Lallaks, Ranks, or Myerses. *E.g.*, Pint aff. ¶ VII; Morris aff. ¶ XXIII. Yet deputy sheriff (and plaintiff) Donald

Buchan also viewed this tape and he concluded that the tape contained inconsistencies in allegations and a denial of certain accusations by the Myerses' eldest son. Buchan aff. ¶ 7. Thus, plaintiffs refer to this tape as exculpatory evidence.

Defendant Morris argues that she was never aware of the existence of this tape and that she never ordered its erasure. *See* Pint aff. ¶ VII. Defendant Morris asserts that assistant county attorney Gehl Tucker advised Pint that the tape would be of no value as evidence and thus Pint simply taped over portions of the tape. Pint aff. ¶ VII.

Another incident which plaintiffs label as the destruction of evidence surrounds Morris' 1984 appointment calendar. Morris' appointment calendar indicated when she interviewed child witnesses. Because Morris frequently did not make notes or reports of each interview, the calendar would have provided the only method to more accurately approximate how frequently Morris interviewed the children. Because plaintiffs claim that Morris interviewed the children an excessive number of times in order to brainwash or break the children, the number of interviews may be an important fact.

Morris admits that she discarded the 1984 calendar at the end of November, 1984. She states that this act was perfectly innocent because she always discards her calendar when she receives the calendar for the new year. Morris uses a calendar which contains the month of December for the current year as well as the twelve months of the upcoming year (*e.g.*, the 1985 calendar contains December of 1984). Thus, Morris concludes that her custom of discarding her calendar prior to the close of the year is not unusual. Morris aff. ¶ XXIV. Morris adds that it was not until after she had thrown her calendar away that she received a subpoena for it in connection with family court matters in December of 1984. Morris aff. ¶ XXIV.

Plaintiffs respond that destroying an appointment calendar instead of preserving it is quite unusual. Plaintiffs also reason that Morris logically would not have thrown away the calendar until the very end of November, or else she would not have had a calendar

for a period of time. On November 20, 1984, the Lallaks served Morris with their complaint, a notice of motion for a nondestruct order, and a proposed nondestruct order. The proposed order forbade the destruction of relevant "documents" and the order explicitly defined "document" to include "calendars." The United States Magistrate did not sign this proposed order until December 10, 1984, but Morris should have been on notice from at least November 20, 1984 that plaintiffs wanted the calendar preserved. This date precedes the time when Morris would have, under her own rationale, logically discarded the calendar (*i.e.*, before her new calendar commenced in December).

At this juncture of the litigation, the Court cannot accept either defendant Morris' characterization of the video tape as nonexculpatory or her assertion that she did not order its destruction. *See Hartford Accident & Indemnity Co.*, 741 F.2d at 1144-45. Neither can the Court accept at this time, Morris' claim that she innocently discarded her calendar. *See Pfizer, Inc. v. International Rectifier Corp.*, 538 F.2d 180, 185 (8th Cir. 1976), *cert. denied*, 429 U.S. 1040 (1977) (summary judgment is notoriously inappropriate when issue of intent is central).

While maintaining that the destruction of the tape and the calendar were both totally innocent, defendant Morris asserts that taken at their worst, these acts are still cloaked by absolute immunity. Defendant Morris relies on two Seventh Circuit cases for the proposition that the destruction of evidence is within the scope of prosecutorial duties and thus enjoys absolute immunity. *Hampton v. Hanrahan*, 600 F.2d 600, 633 (7th Cir. 1979), *rev'd in part on other grounds*, 446 U.S. 754 (1980) (per curiam); *Heidelberg v. Hammer*, 577 F.2d 429, 432 (7th Cir. 1978). Defendant Morris acknowledges cases to the contrary exist, but she implies that they are poorly reasoned.

Hampton and *Heidelberg*, however, do not analyze the issue of whether absolute immunity extends to the destruction of evidence, rather, they merely state a conclusion. *Wilkinson*, 484 F.Supp. at 1085 n.31 (E.D.Pa. 1980). *Wilkinson* is a very thoughtful opinion. The court points out that the destruction of evidence warrants

different treatment from a prosecutor's decision not to turn over exculpatory evidence to the defense, or from a prosecutor not truthfully responding to a court's inquiry concerning the existence of exculpatory evidence. These latter two acts are protected by absolute immunity. These latter two acts, though, involve prosecutors making discretionary judgments, and absolute immunity prevents lawsuits challenging a prosecutor's judgments. They also involve the prosecutor's role as an advocate and are intimately involved in the judicial process. *Wilkinson*, 484 F.Supp. 1083-84.

By contrast, destroying evidence is not closely related to the judicial process, because it keeps evidence away from judicial scrutiny altogether. Unlike withholding evidence, destroying evidence forever eliminates the corrective process of judicial review based on the evidence. *Wilkinson*, 484 F.Supp. at 1083-84. Further, the destruction of evidence does not involve a prosecutor making discretionary decisions as an advocate. A lack of absolute immunity for prosecutors destroying evidence would not hinder prosecutors in making discretionary decisions because prosecutors could merely retain evidence for a reasonable time. *Wilkinson*, 484 F.Supp. at 1083-84.

The decision in *Henderson v. Fisher*, 631 F.2d 1115, 1120 (3d Cir. 1980) (per curiam), also supports the conclusion that the destruction of evidence is not entitled to absolute immunity. In *Henderson*, the plaintiff alleged that the prosecutor knew a police officer had removed exculpatory evidence from a police evidence locker on the day of trial. As a result, the plaintiff did not have access to the evidence while presenting his criminal defense. The plaintiff did not allege that the prosecutor personally destroyed evidence, but only that the prosecutor failed to direct police officers to correct their action. *Henderson*, 631 F.2d at 1117. The court concluded that such action by the prosecutor was not entitled to absolute immunity. *Henderson*, 631 F.2d at 1120. The case law stating that the destruction of evidence is not entitled to absolute immunity has considerable persuasive force. Hence, Morris, at least at this juncture, cannot use absolute immunity to defeat such allegations.

In sum, a number of Morris' alleged transgressions involve acts

which may be outside of her prosecutorial duties. Morris, therefore, cannot rely on absolute immunity at this time to defeat plaintiffs' lawsuits.

2. Qualified Immunity

If defendant Morris is not entitled to absolute prosecutorial immunity, she can still assert the defense of qualified immunity. *See Imbler*, 424 U.S. at 430. Even under the doctrine of qualified immunity, argues Morris, she is entitled to summary judgment before plaintiffs conduct discovery. Yet a defendant's assertion of qualified immunity can defeat a section 1983 action prior to discovery only if the plaintiff has not alleged that the defendant violated clearly established rights. The Court has previously determined that plaintiffs' allegations do involve violations of clearly established rights. No question exists, moreover, that plaintiffs' allegations assert that Morris herself violated their rights. Thus, qualified immunity does not entitle Morris to summary judgment at this stage of the litigation.

B. Deputy Sheriffs

The following Scott County deputy sheriffs are defendants in the Scott County cases: Michael Busch and Patrick Morgan in *Myers*, *Lallak*, *Buchan*, *Meger*, and *Bentz*; Norman Pint in *Myers*, *Lallak*, *Buchan*, and *Bentz*; and David Einertson in *Lallak*.[15]

The Scott County Sheriff's Department became involved in the Jordan sex abuse cases in the fall of 1983. Defendant David Einertson, a detective sergeant in the department, was a complaining witness against James Rud in late October and early November of 1983. Einertson states that he had general supervisory responsibility over defendants Busch, Morgan, and Pint from October, 1983 until the dismissal of the Jordan sex ring cases in October, 1984. Einert-

---

15 The Court will occasionally refer to these defendants collectively as the "deputy sheriffs."

son aff. ¶ II. Defendants Busch, Morgan, and Pint were extensively involved in the Jordan sex ring investigation. They conducted numerous interviews of alleged child sexual abuse victims, and were involved in the initiation of criminal charges and the separation of children from their parents.[16] The deputy sheriffs' interviews with suspected child victims frequently formed the basis of the sexual abuse allegations against the adult plaintiffs.

Plaintiffs allege that the deputy sheriffs participated in the fabrication of accusations against the adult plaintiffs. Purportedly, the deputy sheriffs conducted coercive interviews of the children in order to produce incriminating statements. Plaintiffs further claim that the deputy sheriffs, either personally or in concert with other defendants, caused the improper arrests of the adult plaintiffs and the separations of plaintiffs' families.

The deputy sheriffs deny having committed any wrongdoing. They argue, moreover, that they could not be liable to plaintiffs even if plaintiffs' allegations were true. The deputy sheriffs base this conclusion on two legal arguments which the Court has previously discussed. Initially, the deputy sheriffs reason that their actions did not cause the arrests or separations of families because independent judicial officers determined that probable cause existed for the arrests and the separations. These independent judicial determinations, according to the deputy sheriffs, broke the chain of causation between their conduct and the resulting arrests and separations. Probable cause determinations by independent judicial officers, however, do not insulate the deputy sheriffs from liability if the deputy sheriffs, as alleged, deceived the independent judicial officers. A law enforcement officer who intentionally misleads a judicial officer should not escape section 1983 liability simply because the deception was successful. *See Rodriguez v. Ritchey*, 556 F.2d 1185, 1195 (5th Cir. 1977) (en banc) (Hill, J., concurring); *see also Ames v. United States*, 600 F.2d 183, 185 (8th Cir. 1979)

---

[16] Defendant Busch swore to criminal complaints against the Browns, Lallaks, Myerses, and Ranks. (The Browns and the Ranks have not named any Scott County deputy sheriffs as defendants.) Both defendant Morgan and Pint swore to separate criminal complaints against the Bentzes.

The deputy sheriffs also argue that they are entitled to summary judgment on the basis of qualified immunity. Qualified immunity will protect these defendants from liability if they merely made a mistake in assessing whether probable cause existed, *see, e.g.*, *Pierson v. Ray*, 386 U.S. 547, 555 (1967); *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981), *cert. denied*, 459 U.S. 829 (1982), or if they merely acted in good faith reliance on court orders. *E.g.*, *Tymiak v. Omodt*, 676 F.2d 306, 308 (8th Cir. 1982) (per curiam). Yet the deputy sheriffs' purported transgressions go well beyond simple mistakes; plaintiffs accuse them of reckless disregard of plaintiffs' rights. Furthermore, the deputy sheriffs' alleged misconduct involves the violation of clearly established rights, and thus they cannot obtain summary judgment before plaintiffs have had the opportunity to conduct discovery. *See, e.g.*, *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2816 (1985); *Hobson v. Wilson*, 737 F.2d 11, 26-27 (D.C.Cir. 1984), *cert. denied*, 105 S.Ct. 1843 (1985). In sum, granting the deputy sheriffs summary judgment prior to determining precisely what their conduct was, would be inappropriate. *See Beard v. Udall*, 648 F.2d 1264, 1272 (9th Cir. 1981) (per curiam).

C. Sheriff Tietz

Scott County Sheriff Douglas Tietz is a defendant in *Myers*, *Lallak*, and *Buchan*. As chief law enforcement officer for the county, *see* Minn. Stat. § 387.03, a sheriff is responsible for the actions of the deputy sheriffs. Minn. Stat. § 387.14. The plaintiffs who name Tietz as a defendant do not accuse him of personally engaging in acts such as improperly interviewing witnesses, but they do claim that Tietz was grossly negligent in training and supervising the deputy sheriffs involved in the Jordan sex ring investigation. Plaintiffs allege, inter alia, that Tietz allowed the deputy sheriffs to work under the direction of Morris, and that he failed to prevent the deputy sheriffs from committing transgressions which he either knew or should have known were occurring.

Defendant Tietz argues that even if these allegations were true, he cannot be subjected to section 1983 liability because the allegations

rely on the doctrine of respondeat superior. Under section 1983, a supervisory official cannot be vicariously liable for the acts of subordinates based on the doctrine of respondeat superior. *See Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978); *Jennings v. Davis*, 476 F.2d 1271, 1274 (8th Cir. 1973). Nevertheless, plaintiffs can still conceivably recover against defendant Tietz because their allegations that Tietz improperly trained and supervised the deputy sheriffs are not founded on respondeat superior. Rather, these accusations seek to hold Tietz directly liable for his own failures. *See Herrera v. Valentine*, 653 F.2d 1220, 1224 (8th Cir. 1981). Officials can be liable under section 1983 for improper training or supervision of subordinate law enforcement officers. *See Herrera*, 653 F.2d at 1224; *Pearl v. Dobbs*, 649 F.2d 608, 609 (8th Cir. 1981) (per curiam).

In order to prevail on a claim of improper training, a plaintiff must prove that a defendant deliberately chose a training program which would prove inadequate. *City of Oklahoma City v. Tuttle*, 105 S.Ct. 2427, 2436 (1985) (Rehnquist, J., plurality). A policy of inadequate training, however, cannot be inferred from a single incident of police misconduct. *Tuttle*, 105 S.Ct. at 2436-37 (Rehnquist, J., plurality), 2440 (Brennan, J. concurring). Still, a plaintiff can establish a policy of inadequate training, as well as a policy of deficient supervision, by direct evidence regarding those practices. *See Tuttle*, 105 S.Ct. at 2437-38, 2439-40 (Brennan, J., concurring). A plaintiff can also hold a defendant liable for deficient supervision by demonstrating that the defendant failed to respond to a known pattern of subordinate misconduct. *See Baker v. McCoy*, 739 F.2d 381, 384 (8th Cir. 1984); *Herrera*, 653 F.2d at 1224.

Here, plaintiffs are alleging that the deputy sheriffs were committing repeated acts of misconduct, and that Tietz should have rectified the situation. If the deputies were acting improperly, Tietz does have a statutory obligation to take corrective measures. *See* Minn. Stat. § 387.14 (sheriff responsible for actions of deputies). In addition, plaintiffs' accusation that Tietz was aware of repeated transgressions is plausible considering the deputy sheriffs' extensive involvement in the Jordan sex ring investigation. Plaintiffs, there-

fore, are entitled to attempt to develop evidence which would bear on the adequacy of defendant Tietz' supervision and training of the deputy sheriffs.[17]

Even if plaintiffs could prove that he had a policy of improperly training or supervising the deputy sheriffs, argues defendant Tietz, plaintiffs could not establish that such a policy caused the violations of plaintiffs' rights. Tietz thus concludes that he is entitled to summary judgment at this juncture. Of course, plaintiffs will ultimately have to show "an affirmative link between" any Tietz policy and the violations of plaintiffs' rights. *E.g.*, *Tuttle*, 105 S.Ct. at 2436 (Rehnquist, J., plurality). On a summary judgment motion, however, especially one made before discovery has commenced, the Court cannot conclude that a Tietz policy could not have caused violations of plaintiffs' rights. *See, e.g.*, *Hartford Accident & Indemnity Co. v. Stauffer Chemical Co.*, 741 F.2d 1141, 1144-45 (8th Cir. 1984) (court must view facts in light most favorable to party resisting summary judgment). The Court, therefore, denied defendant Tietz' motion.

D. Human Services Department

The Scott County Human Services Department (HSD) (also referrd to as the welfare department) is a defendant in *Myers*, *Lallak*, *Buchan*, *Meger*, *Bentz*, and *Brown*. Former director of HSD Margaret Subby, and social worker Doris Wilker are defen-

---

[17] Although defendant Tietz did not argue that he has no responsibility for training the deputy sheriffs, the Jordan City Police Department asserted that local law enforcement departments and officials have no duty to train police officers because the Minnesota Board of Peace Officer Standards and Training (hereafter Training Board) has sole responsibility for that function. Minn. Stat. §§ 626.843-845 does give the Training Board the tasks of, inter alia, certifying police officers training programs and licensing police officers. *See* Minn. Stat. § 626.845, subd. l(a) & (d). The Training Board's responsibilities for training police officers, however, does not mean that local law enforcement departments and officials have no responsibilities for training. *See* Minn. Stat. § 626.845, subd. l(f) (Training Board to consult with local law enforcement departments in developing in-service training programs for peace officers). Thus, plaintiffs can assert improper training allegations against defendant Tietz.

dants in *Myers*, *Buchan*, *Meger*, *Bentz*, and *Brown*. Social workers Mary Tafs and Judy Dean are defendants in *Buchan*; social worker Rachel Paff is a defendant in *Lallak*; and Joel Kaufman, a psychologist, formely employed by HSD, is a defendant in Meger.[18]

In October of 1983, shortly after the September 26, 1983 arrest of James Rud, County Attorney Morris approached HSD Director Subby to discuss suspected child abuse in Scott County. Subby aff. ¶ IV. Morris requested that HSD social workers be present during law enforcement officers' interviews of suspected child abuse victims. Subby aff. ¶ V. During the ensuing Jordan sex ring investigation, various social workers would accompany officers to interviews of children. The HSD defendants state that the social worker's role at an interview was to provide emotional support to the children. The HSD defendants admit, however, that the social workers would "on occasion" assist in the interviews. The HSD defendants state that social workers would provide such assistance when a police officer "faltered or became uncomfortable with the discussion." Also, if a child had difficulty understanding a question, the social workers would assist in the interview. All HSD defendants involved in interviews stress that they did not coerce the child witnesses.

The interviews in which the social workers participated included at least some sessions prior to the arrest of adult plaintiffs and the removal of children. Wilker, for example, was present at interviews of the Brown children prior to the January 11, 1984 arrest of Thomas and Helen Brown. (The Brown children were also separated from their parents that day.) *See* Wilker aff. ¶ XLII. In addition, Wilker participated in interviews of Chris Brown's[19] three children on January 10 and 11, 1984. Hunter aff., exh. Brown 1-2. The interviews of Chris Brown's children formed the basis for arresting Thomas and Helen Brown and removing their children from them. Norring April 30, 1985 aff. ¶ 15.

Wilker states that she did not suggest, recommend, or even

---

[18] The Court will occasionally refer to these defendants collectively as the "HSD defendants."

[19] Chris Brown is Helen Brown's sister.

participate in the decision to arrest the Browns and separate them from their children. Wilker aff. ¶ XLIV. The other HSD defendants similarly declare that they had no role in such decisions. Paff aff. ¶ XI, Tafs aff. ¶ VIII, Dean aff. ¶ XIX, Kaufman aff. ¶ VI. Director Subby states that HSD itself did not make any recommendations or take any action in the process of charging adult plaintiffs or deciding to remove children from their parents. Subby aff. ¶ VII. Subby believes that all such decisions were made by the county attorney's office and/or law enforcement officials. Subby aff. ¶ VII.

When law enforcement officers actually separated the children from their parents, a social worker was present to provide support to the children.[20] Following the separation, the social workers would arrange for temporary foster care of the children. In the meantime, the county attorney's office would prepare a neglect petition for the family court. A social worker would, on behalf of HSD, sign the document as the petitioner.[21] Morris also signed each petition, indicating that the petition was prepared on her recommendation and approval.

All of the neglect hearings involving plaintiffs resulted in court orders finding probable cause of neglect and providing for family court custody of the children. Subsequently, the children were placed in foster homes. The social workers provided support to the foster parents, and monitored and supervised the foster parents' relationships with the children. Social workers also continued to be present at various interviews in which law enforcement officers questioned the children.

Also, interviews following the separation of children and parents could have played a role in formulating accusations against some of the adult plaintiffs. For instance, defendant Wilker was not present at any interviews of the Myers children prior to Greg Myers' arrest

---

[20] Wilker was present at the removal of the Brown, Bentz, Myers, and Buchan children. Paff was present at the removal of the Brown and Bentz children. Tafs was present at the removal of the Bentz children.

[21] Wilker signed neglect petitions regarding the children of the Browns, Myerses, and Buchans. Paff signed the Bentz neglect petition.

and the removal of the Myers children, both events occurring on February 6, 1984. *See* Wilker aff. ¶ XIX. Wilker was, however, present during interviews of the Myers children after this time. *See* Wilker aff. ¶ XXIII. Accusations made by the Myers children later formed the basis for, inter alia, the May 23, 1985 arrest of Jane Myers and the arrests on June 4, 1984 of the Buchans. Wilker acknowledges that she was present at interviews of the Myers children prior to the arrests of Jane Myers and the Buchans, yet she claims she did not participate in the questioning of the Myers children. Wilker aff. ¶ XXIII. Plaintiffs point out, however, that in the family court proceeding regarding the Myers children, Wilker testified that on some occasions she had questioned children in order to develop evidence for trial. *In re Myers Children*, Family Court Transcript Excerpt, at 89. Wilker added that she only asked questions at the request of the guardian at litem. *Id.*

Defendant Wilker appears to be the social worker most heavily involved with purported child abuse victims. Wilker signed neglect petitions and was present during numerous interviews of child witnesses. Wilker also served as a liason between HSD and law enforcement officials and worked out of the county attorney's office for a period of time. Wilker aff. ¶ XVI. Additionally, Wilker was involved with the supposed voluntary placement of the Meger children. Counsel for the HSD defendants conceded at oral argument that an issue of fact exists regarding the voluntariness of Wanda Meger's assent to the placement.

Defendant Paffs seems to have played a less extensive role. The HSD defendants state that Paff, a defendant only in *Lallak*, participated in interviews on the same basis as Wilker. Paff acknowledges being present at a February 1984 interview of the Lallaks' daughter, but she states that this was her only contact with the Lallak children. Paff aff. ¶ VIII, X. (The Lallaks were arrested on May 23, 1984, but county officials never obtained custody of the children because the children were out of the jurisdiction.)

Defendants Tafs and Dean are defendants only in *Buchan*, and they both state that all their contact with the Buchan children was in the context of monitoring and supervising foster care of the

children. Tafs and Dean add that they performed their duties relating to foster care within family court guidelines and at the direction of guardians ad litem. Tafs aff. ¶ XXXVI; Dean aff. ¶ XX. Tafs acknowledges attending some child interviews, but Dean indicates that her only dealings with alleged victims related to monitoring foster care.

Finally, former HSD psychologist Kaufman is a defendant only in *Meger*. Defendant Kaufman acknowledges that he provided psychological services to the Meger children and to the parents prior to the separation of the Meger family. *See* Kaufman aff. ¶¶ VIII-X. Kaufman, however, denies manipulating the children into giving false or misleading information. Kaufman ¶ XIV.

Plaintiffs assert that HSD employees acted in concert with the other defendants in developing accusations against the adult plaintiffs in reckless disregard of the truth. Plaintiffs further assert that the actions of the HSD defendants contributed to initial separation of the parents and children. Moreover, plaintiffs maintain that the actions of these defendants contributed to the continued separation of parents from their children. The HSD defendants purportedly accomplished this result by withholding exculpatory evidence (*e.g.*, children's denials that adults sexually abused them) and participating in interviews which caused the children to make the accusations which the questioners sought. Plaintiffs further allege that the HSD defendants contravened various state statutes and regulations dealing with social workers and the handling of child sexual abuse accusations.

1. Viability of Claims

The HSD defendants assert that they are entitled to summary judgment because plaintiffs have not alleged that the HSD defendants deprived plaintiffs of federally protected rights. Of course, to state a claim under 42 U.S.C. § 1983, a plaintiff must allege that the defendant's conduct deprived plaintiff of a right, privilege, or immunity protected by the federal Constitution or federal law. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). The Court will next examine

what federally protected rights the HSD defendants may have impinged.

a. Fourth Amendment

Plaintiffs have alleged that the social workers were part of a conspiracy to develop, in reckless disregard of the truth, accusations which led to the arrests of plaintiffs. A significant means for developing accusations, assert plaintiffs, was the interviews of children in which the interviewers would cause the children to give the desired responses. The HSD defendants respond that even if plaintiffs' fourth amendment rights were violated, the HSD defendants are not responsible. These defendants state that the investigation leading to the arrest of various plaintiffs was conducted by law enforcement officials and not HSD. The HSD defendants stress that the determinations to arrest adults were made by the county attorney's office and law enforcement officers. According to the HSD defendants, the social workers did not make any recommendations or influence in any way the arrest decisions.

While the HSD defendants claim that they did not play a "major" role in the investigations leading up to the arrests of plaintiffs, they do not deny that they did play a role. The HSD defendants acknowledge that they aided in questioning children regarding possible sexual abuse, but they state that their participation was minimal.

The HSD defendants' admitted presence and participation in at least some interviews prior to plaintiffs' arrests, indicates that these defendants had the opportunity to commit the transgressions which plaintiffs allege. Defendants state that they did nothing improper and that they did not influence arrest decisions in any way. This could well be true. At this juncture, however, the Court should not simply accept defendants version of the facts, *e.g.*, *Hartford Accident & Indemnity Co. v. Stauffer Chemical Co.*, 741 F.2d 1142, 1144-45 (8th Cir. 1984). If the HSD defendants participated in recklessly developing accusations against plaintiffs, then the HSD defendants could be liable even if the county attorney or a judicial officer made the determination to arrest plaintiffs. *Dick v. Wa-*

tonwan County, 551 F.Supp. 983, 993 (D.Minn. 1982); *see also Wheeler v. Cosden Oil and Chemical Co.*, 734 F.2d, 254, 260 (5th Cir.) (discussing malicious prosecution), *mod. on other grounds*, 744 F.2d 1131 (1984).

b. Liberty Interest

Defendants do not dispute that plaintiffs have a protected liberty interest under the fourteenth amendment in keeping their family units together. *E.g.*, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977). The HSD defendants contend, however, that plaintiffs have not stated a cause of action against them for intruding on this liberty interest. The HSD defendants reason that the procedures in the family court provided plaintiffs all the process that was due in connection with the removal of plaintiffs' children, but the Court has previously rejected this analysis.

The HSD defendants also assert that they are entitled to summary judgment because they took no part in the decision to remove the children from the parents. The Court does not accept this argument for reasons similar to the rationale for rejecting the HSD defendants' claims that they had nothing to do with causing plaintiffs' arrests. The HSD defendants acknowledge that they took part in at least some interviews prior to the children's removal. In addition, a social worker was on the scene when law enforcement officials actually removed children. Social workers were also the complainants on the neglect petitions. Thus, the HSD defendants had the opportunity to influence and recommend removal of the children. The HSD defendants' contention that they did not actually exercise any influence in the removal decisions, while it may well be true, should not be accepted by the Court at this point.

Even if the HSD defendants did not participate in the actual decision making process leading to the separation of children from their parents, they still could have contributed to the separations. The HSD defendants allegedly took part in fabricating accusations

by the children, and these accusations ultimately led to the initial separation of the families. Thus, the HSD defendants' alleged aiding in the creation of charges, by itself, could have contributed to the separation of children from adults. HSD defendants also were involved in child interviews after the children were separated from their parents. Through such interviews, plaintiffs claim that the HSD defendants participated in further attempts to create accusations and suppression of exculpatory evidence. If true, such acts could have contributed to the continuing separation of the plaintiffs' families. Thus, the HSD defendants could have impinged upon plaintiffs' liberty interests.

c. State Statutes and Regulations

In addition to asserting that the HSD defendants infringed upon their fourth amendment rights and their liberty interests in family integrity, plaintiffs assert that defendants violated rights created by state statutes and regulations. For instance, plaintiffs claim the HSD defendants failed to give the plaintiffs Tennessen warnings. Minn. Stat. §13.04, subd. 2. This warning is part of the Government Data Practices Act, Minn. Stat. §§ 13.01-.88, and it requires social workers to, inter alia, inform interviewees whether they may refuse to answer questions and why information is being sought. Another statute allegedly violated was Minn. Stat. § 626.556, subd. 10(a) which directs the local welfare agency to immediately assess reports of child abuse. That statute further provides that in dealing with child abuse, the local welfare agency shall preserve the family whenever possible. The plaintiffs also claim that the HSD defendants contravened Minn. Rules § 9560.0280, subp. 2E which mandates that before children are removed from their parents, the parents must have an opportunity to voluntarily place the child in a safe setting (*e.g.*, with a relative).

The HSD defendants acknowledge that social workers traditionally attempt to resolve problems of child abuse with the entire family, but they state that the Jordan sex ring cases were not traditional. Most court orders and bail bonds, point out the HSD

defendants, prohibited contact between parents and children. This prohibition, however, would not prevent social workers from providing parents the chance to voluntarily place their children, nor would it completely prevent social workers from working with parents.

Nevertheless, the HSD defendants maintain that even if they violated state statutes and regulations, such violations are not actionable under section 1983. The HSD defendants rely on *Baker v. McCollan*, 443 U.S. 137, 146 (1979), which held that because section 1983 imposes liability only for transgressions of rights protected by the Constitution, violations of state tort law are not actionable under the statute. Defendants reason that similarly, violations of state laws and regulations cannot form the basis for recovery under section 1983.[22]

A cause of action exists under section 1983 only for violations of rights, privileges, or immunities protected by the federal Constitution or federal law. *E.g., Parratt*, 451 U.S. at 535. Rights guaranteed by state statutes and regulations, however, can create constitutionally-protected interests which may not be denied without due process. *Joseph A. v. New Mexico Department of Human Services*, 575 F.Supp. 346, 354 (D. N.M. 1983), *citing Fuentes v. Shevin*, 407 U.S. 67 (1972); *cf. Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). In fact, *Doe v. Hennepin County*, Civ. 4-84-115, slip op. at 11-14 (D.Minn. June 26, 1984), found that alleged violations of some of the same state statutes and regulations involved in the Scott County cases were actionable under section 1983. The plaintiffs in *Doe* alleged that when the defendants removed plaintiffs' children based on accusations of child abuse, the defendants disregarded the provisions of Minn. Stat. §626.556, subd. 10 and its corresponding regulations. 12 M.C.A.R. § 2.207, *recodified as* Minn. Rules. § 9560.0280, subp. 2-4. In *Doe*, the social worker defendants moved for summary judgment at an early

---

[22] The HSD defendants also argue that violations of state statutes and regulations are irrelevant to their entitlement to qualified immunity. The Court will address this contention in its discussion of the HSD defendants and qualified immunity.

stage in the litigation, but the court denied their motion. The court reasoned that factual disputes existed over issues such as whether the welfare agency immediately investigated the charges and whether it attempted to preserve the family as required by statute. *Doe*, slip op. at 13-14. Thus, the HSD defendants' purported violations of state statutes and regulations is conduct actionable under section 1983.[23]

2. Immunity Defenses

The HSD defendants also claim that they are entitled to dismissal on the basis of both absolute and qualified immunity.

a. Absolute Immunity

The HSD defendants assert that as social workers involved in the handling of sexual abuse cases, they are protected by absolute immunity from section 1983 liability. To support this contention, they rely on *Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir. 1984) and *Whelehan v. County of Monroe*, 558 F.Supp. 1093 (W.D.N.Y. 1983). Both of these cases held that social workers investigating sexual abuse allegations were absolutely immune. These courts reasoned that social workers should enjoy absolute immunity because otherwise they faced the constant threat of retaliatory lawsuits brought by disgruntled parents. *Kurzawa*, 732 F.2d at 1458; *Whelehan*, 558 F.Supp. at 1098-99.[24]

---

[23] Some plaintiffs further argue that because many state regulations dealing with handling child abuse charges were adopted according to federal law, Title IV-E of the Social Security Act, 42 U.S.C. § 670-676, violations of the regulations implicate federal law as well. *See* 42 U.S.C. §§ 671(15), 672(a), 675; 45 C.F.R. §§1355-57; *Lynch v. Dukakis*, 719 F.2d 504, 510-11 (lst Cir. 1983) (violations of Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-76, actionable under section 1983). The Court finds it unnecessary to reach this argument.

[24] *Whelehan* also reasoned that social workers act like prosecutors when they decide to initiate sexual abuse charges and remove children from their parents. *Whelehan*, 558 F.Supp. at 1099. Here the HSD defendants state they played no such role.

This proposition, however, is contrary to the majority of case law.[25] *Doe v. Hennepin County*, slip op. at 15, *citing Joseph A.*, 575 F.Supp. 346 (D.N.M. 1983); *Dick*, 551 F.Supp. 983 (D.Minn. 1982); *Mattson v. Bankole*, CIV. 4-83-113, slip op. (D.Minn. May 27, 1982); *Doe v. Suffolk*, 494 F.Supp. 179 (E.D.N.Y. 1980). The argument that social workers need protection from lawsuits can also be made on behalf of police officers, because police officers have a similar potential for becoming defendants in actions commenced by the individuals they arrest. Still, police officers are not cloaked by absolute immunity. *Pierson v. Ray*, 386 U.S. 547, 555 (1967). The Supreme Court has declared, moreover, that courts cannot create new forms[26] of absolute immunity under section 1983 because certain officials need protection from the constant threat of retaliatory litigation. *See Tower v. Glover*, 104 S.Ct. 2820, 2826 (1984). If sound policy reasons exist for establishing new forms of absolute immunity, Congress, not the courts, must do so. *Tower*, 104 S.Ct. at 2826.

The HSD defendants, however, also seek to invoke an established basis for absolute immunity under section 1983. They reason that because they were assisting a county attorney in determining whether or not to initiate prosecutions, they are entitled to prosecutorial immunity. The HSD defendants rely on *Lawyer v. Kernodle*, 721 F.2d 632 (8th Cir. 1983), which held that a doctor who was accused of negligently performing an autopsy was absolutely immune. Because the information the doctor generated was to be used by the prosecutor to determine whether or not to file charges, the doctor was entitled to the same immunity as a prosecutor. *Lawyer*, 721 F.2d at 636. The HSD defendants state that they played a similar role in the Jordan sex ring cases. In *Lawyer*, the plaintiff

---

[25] In the discussion of the noncourt appointed therapist defendant, the Court specifically addresses *Kurzawa*'s statements that noncourt appointed officials are entitled to absolute immunity.

[26] The absolute immunities which the Supreme Court has recognized under section 1983 are immunities based on those which existed when the Civil Rights Act was passed in 1871. *Tower*, 104 S.Ct. at 2825.

had alleged only that the doctor was negligent in performing the autopsy, while here plaintiffs allege that defendants acted with reckless indifference to plaintiffs' rights. More importantly, the Court has previously concluded that defendant Morris might have acted beyond her prosecutorial role. Thus, the HSD defendants will not be able to derive prosecutorial immunity from their assistance of Morris if Morris was acting beyond her prosecutorial functions. The HSD defendants, therefore cannot prevail on the basis of absolute immunity.

b. Qualified Immunity

The HSD defendants also contend that qualified immunity entitles them to summary judgment at this juncture. These defendants initially argue that their purported violations of state statutes and regulations cannot defeat their claim to qualified immunity. In *Davis v. Scherer*, 104 S.Ct. 3012, 3020 (1984), the Supreme Court held that "[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." If a defendant violates a statute or regulation irrelevant to the plaintiff's underlying constitutional claim, the defendant will not forfeit the defense of qualified immunity. *See Davis*, 104 S. Ct. at 3018. On the other hand, when a defendant's violation of a state statute or regulation is itself part of a plaintiff's cause of action, the violation may strip a defendant of the qualified immunity defense.[27] *See Davis*, 104 S.Ct. at 3020 n.12.

Here, the HSD defendants' purported violations, if true, do give rise to a cause of action under section 1983. The state laws and regulations the HSD defendants allegedly contravened concerned proper steps associated with the removal of children from their parents, and these transgressions are central to plaintiffs' constitutional claims. The *Davis* Court, in fact, indicated that if state law created procedural rules which govern what process is due under the fourteenth amendment, then violations of such rules would strip a

[27] This assumes the defendant is violating clearly established law.

defendant of qualified immunity. *See Davis*, 104 S.Ct. at 3019 n.11. Thus, if the HSD defendants actually violated Minnesota statutes and regulations dealing with child removal, they would not be entitled to qualified immunity.[28]

Irrespective of violations of state statutes and regulations, the HSD defendants cannot prevail on the basis of qualified immunity. As the Court has previously stated, plaintiffs are asserting violations of clearly established rights, and they are thus entitled to conduct discovery. Some of the individual HSD defendants, though, appear to have played a minor role in the Jordan sex ring cases. For instance, social workers Tafs and Dean are defendants only in *Buchan*, and they state that their contact with the Buchan children was entirely in the context of monitoring and supervising foster care of the children. They stress that they performed their duties relating to foster care within family court guidelines and at the direction of guardians ad litem. The family court did direct HSD to place the Buchan children in foster homes, *In re Buchan Children*, June 7, 1984 Order, at 2; *see also In re Buchan Children*, Nov. 15, 1984 Order, at 2. If Tafs' and Deans' activities relating to *Buchan* were solely actions taken in good faith reliance on court orders, then these defendants will prevail on the basis of qualified immunity. *E.g.*, *Tymiak v. Omodt*, 676 F.2d 306, 308 (8th Cir. 1982) (per curiam). The Court, however, is not at present in a position to conclude that Tafs and Dean's role was limited to good faith reliance on court orders.

3. Human Services Department

The Human Services Department, as an agency of Scott County, cannot raise a qualified immunity defense. See *Owen v. City of Independence*, 445 U.S. 622, 650 (1980). On the other hand, the HSD is not liable for the acts of its employees under the doctrine of respondeat superior. *Monell v. New York City Department of*

---

[28] A reasonable social worker, of course, would be aware of these relevant statutes and regulations.

Social Services, 436 U.S. 658, 691 (1978). The HSD would be liable if an affirmative link existed between its policies or customs and the alleged violation of plaintiffs' rights. *City of Oklahoma City v. Tuttle*, 105 S.Ct. 2427, 2436 (1985) (Rehnquist, J., plurality); see also Monell 436 U.S. at 694.

Plaintiffs do assert that policies and customs of the HSD caused violations of plaintiffs' constitutional rights. For example, plaintiffs claim that HSD had a policy of not working to reunite the family, whenever possible, which would be in direct contravention of a stated statutory goal. Minn. Stat. § 626.556, subd. 10. The Court should not merely accept the HSD's claim that it had no improper policies or customs because discovery could yield evidence to the contrary. Plaintiffs are also entitled to attempt to establish an affirmative link between an HSD policy or custom and violations of plaintiffs' rights. Accordingly, the Court denied HSD's motion for summary judgment.

E. Scott County Defendants

Scott County, the political entity, is a defendant in all Scott County cases, while the Scott County Board of Commissioners (hereafter Board) is a defendant in only *Lallak*. The Board was also a defendant in *Meger*, but the Megers dismissed their claims against the Board without prejudice. The sole case to name individual members of the Board as defendants was *Rank*, but the Ranks have dismissed without prejudice their claims against individual board members.

Under section 1983, respondeat superior is not a basis for holding the Board or Scott County liable. See *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978). "Instead, it is when execution of a [local] government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Monell*, 436 U.S. at 694. An affirmative link must exist between the policy or custom and the violation of constitutional rights. *City of Okla-*

homa City v. Tuttle, 105 S.Ct. 2427, 2436 (1985) (Rehnquist, J , plurality). Unlike individual officials, the Board and Scott County cannot raise the defense of qualified immunity, *see Owen v. City of Independence*, 445 U.S. 622, 650 (1980); *Dick v. Watonwan County*, 562 F.2d 1083, 1103 (D.Minn. 1983), *rev'd in part on other grounds*, 738 F.2d 939 (8th Cir. 1984), nor can they be liable for punitive damages. *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

1. Board of Commissioners

Board chairman Dick Mertz indicates that the Board did not have any direct involvement in the Jordan sex ring investigation. Mertz acknowledges that the Board generally knew of various criminal arrests and family court proceedings regarding alleged child sex abuse. Mertz aff. ¶ 8, 13. According to Mertz, though, the Board was not informed on any specific details of investigations, criminal charges, or family court proceedings. Mertz aff. ¶ 5, 14. In fact, Mertz states that the Board did not have direct or indirect involvement in the investigation or prosecution of criminal or family court matters. Mertz aff. ¶ 11. At no time, claims Mertz, did the Board establish or attempt to establish any policy, procedure, practice, or custom for the county, the county attorney's office, the county sheriff's office, or the county human services department (HSD) regarding the sexual abuse cases. Mertz aff. ¶ 12. In June of 1984, the Board did provide the county attorney's office and the HSD with additional personnel and office space because of the increased demands associated with ensuing sexual abuse trials. Mertz aff. ¶ 5.

The Lallaks make much of the Board's approval of these additional funds, stating that the amount far exceeded any previous allocations and included huge overtime costs. The Board's approval of the increased funds, conclude the Lallaks, indicates that the Board was not completely oblivious to the investigatory techniques being employed. By providing these funds, the Board supposedly sanctioned and encouraged the county attorney and the sheriff.

Thus, the Lallaks argue that the Board is liable to them because it created a policy of nonintervention and deliberate indifference toward the methods used by all the various Scott County departments involved in the investigation.

To support their contention, the Lallaks point to *Turpin v. Mailet*, 619 F.2d 196, 200 (2d Cir.), *cert. denied*, 449 U.S. 1016 (1980), which held that a municipality can promulgate an official policy within the meaning of *Monell*, by implicitly or tacitly authorizing, approving, or encouraging misconduct. *See also Herrera v. Valentine*, 653 F.2d 1220, 1224 (8th Cir. 1981). The *Turpin* court gave the example of senior personnel having knowledge of their subordinates committing a pattern of unconstitutional acts, and doing nothing to correct the misconduct. If the senior personnel's failure to take remedial measures constituted deliberate indifference or tacit approval of the misconduct, a municipality could be held liable for subsequently occurring misconduct. *Turpin*,619 F.2d at 201. *See also Parnell v. Waldrep*, 538 F.Supp. 1203, 1205 (W.D.N.C. 1982) (county and its board liable under section 1983 because they were aware of unconstitutional prison conditions and failed to rectify them). *Turpin*'s rationale has been embraced by the Eighth Circuit. *See Herrera*, 653 F.2d at 1224, *citing Turpin*. One incident of subordinate misconduct, however, is an insufficient basis for inferring a municipal policy. *Tuttle*, 105 S.Ct. at 2436-37 (Rehnquist, J., plurality), 2440 (Brennan, J., concurring).

In the present actions, however, the Board was not in a position to correct patterns of misconduct in the county attorney's office, the sheriff's department, or the HSD. The Board cannot dictate the policies of the county attorney or the county sheriff because these two individuals are independently elected and derive their powers to conduct county affairs from state statutes. *See* Minn. Stat. §§ 388.01-.22 (county attorney) and §§ 387.01-.45 (sheriff). In addition the Scott County Human Services Board, and not the County Board, established policies for HSD. *See* Mertz aff. ¶ 9; Human Services Act, Minn. Stat. §§ 402.01-.10. Because the Board was not in a position to rectify transgressions of these three departments, the Board cannot be liable for failing to take corrective measures. *See*

Anderson v. Nosser, 438 F.2d 183, 190 (5th Cir. 1971), *mod. on other grounds*, 456 F.2d 835 (en banc), *cert. denied*, 409 U.S. 848 (1972). Neither can the Board be subjected to liability for approving additional funding for the HSD and the county attorney's office. Funding facially legitimate budgetary requests cannot constitute approval of unconstitutional policies. Thus, summary judgment is warranted for the Board.[29]

2. Scott County

The Court's conclusion that the Board is entitled to summary judgment does not automatically lead to the same result for the summary judgment motion of Scott County (hereafter County) itself. In addition to measures taken by its board of commissioners, a county acts through its high level officials. *See, e.g., Bowen v. Watkins*, 669 F.2d 979, 989 (5th Cir. 1982); *Leite v. City of Providence*, 463 F.Supp. 585, 589 (D.R.I. 1978). In holding that a municipality could be held liable under section 1983 only on the basis of a municipal policy or custom, the *Monell* Court indicated that potential sources for such policies or customs were municipal "lawmakers or . . . those whose edicts or acts may fairly be said to represent official policy." *Monell*, 436 U.S. at 694. A policy which can be attributed to a municipal policy maker constitutes a municipal policy under section 1983. *Tuttle*, 105 S.Ct. at 2436 (Rehnquist, J., plurality).

In *Sanders v. St. Louis County*, 724 F.2d 665, 668 (8th Cir. 1983) (per curiam), the Eighth Circuit stated that "[i]t may be that one act of a senior county official is enough to establish the liability of the county, if that official was in a position to establish policy and if that official himself directly violated another's constitutional rights." The issue of when a governmental official's actions constitute a municipal policy or custom is a hotly contested topic in this circuit. *See Williams v. Butler*, 746 F.2d 431, 438 (8th Cir. 1984),

---

[29] As a practical matter, granting the Board's summary judgment motion does not harm the Lallaks because Scott County itself remains a defendant in the case.

aff'd by an equally divided court, 762 F.2d 73 (1985) (en banc). Two views of what constitutes a municipal policy appear to have developed, but both views acknowledge that individual officials can make policies or customs which can subject municipalities to section 1983 liability if the officials act pursuant to their policymaking authority. *See Williams*, 746 F.2d at 444 (McMillian, J., dissenting).

Plaintiffs argue that Scott County itself should be liable based on the policies and customs promulgated by high ranking county officials such as the county attorney, the sheriff, and the director of HSD. Examples of the possible policies or customs include those relating to the manner of conducting the sex ring investigation, the training and supervision of county employees, and the purported failure of HSD to attempt to reunite families whenever possible. Plaintiffs state that the many criminal defendants in the sex ring investigation indicates the existence of a policy as opposed to mere isolated incidents, and plaintiffs assert that discovery will produce additional facts indicating various policies or customs.

The County responds that the actions of these high ranking county officials do not constitute county policies or customs. The County first points to *Spielman Motor Sales Company, Inc. v. Dodge*, 295 U.S. 89, 92-94 (1935) which held that a district attorney for a New York county was, under New York law, acting as an officer of the state when enforcing state laws. The *Dodge* Court had to decide whether the district attorney was acting as a state official in order to determine whether a federal law allowing injunctions against state officials would apply. *Dodge* did not involve an action under section 1983, and thus it does not stand for the proposition that a county attorney cannot make county policy in terms of section 1983 law.

The County does point to two section 1983 cases which are relevant to this issue. In *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980), the court held that in enforcing state law, a county judge was not acting as a county policy maker. The court observed that under Texas' governmental structure, county judges do undertake many actions in governing counties which would amount to making county policy under *Monell*. While implement-

ing a law which gave the judge only narrow discretion, however, the judge was acting like a county sheriff enforcing a state law. The judge's implementation of the law, concluded the court, effectuated state policy and should not subject a particular county to liability under section 1983. *Familias Unidas*, 619 F.2d at 404.

Based on *Familias Unidas*, a district court held that a county could not be liable for the policy a district attorney[30] established regarding the issuing of misdemeanor arrest warrants. *Crane v. State of Texas*, 534 F.Supp. 1237 (N.D.Tex. 1982), *rev'd in part*, 759 F.2d 412 (5th Cir.), *aff'd on reh'g*, 766 F.2d 193 (1985) (per curiam). The district attorney created a policy whereby the clerk of court would issue a misdemeanor arrest warrant on the basis of a district attorney's affidavit. Thus, no neutral magistrate would make a probable cause determination before the arrest warrant issued. The district court declared the policy unconstitutional, but found that the county was not liable. The district court concluded that the policy was not a county policy because it was not created for the county, nor was it subject to the county's control. *Crane*, 534 Supp. at 1246. Like the judge in *Familias Unidas*, reasoned the district court, the district attorney was a state actor carrying out state policy. *Crane*, 534 F.Supp. at 1245-46.

The Fifth Circuit, however, reversed *Crane*'s holding that the county was immune. *Crane v. State of Texas*, 759 F.2d 412 (5th Cir.), *aff'd on reh'g*, 766 F.2d 193 (1985) (per curiam). The court observed that county voters had elected the district attorney to his office, and he was able to establish the misdemeanor arrest warrant policy by virtue of his office. The district attorney, therefore, was a policy making official for the county and the county was liable under *Monell* for the policy he created. *See Crane*, 759 F.2d at 429-30; 766 F.2d at 194-95.

Here, plaintiffs allege that defendants Morris, Tietz, and the HSD established policies and customs regarding the Jordan sex ring investigations which caused violations of plaintiffs' rights. Morris

---

[30] In Texas, a district attorney represents a district, which is usually one county. *Crane v. State of Texas*, 766 F.2d 193, 195 (5th Cir. 1985) (per curiam).

and Tietz are two of the highest ranking elected officials in Scott County, and both are in positions to create county policies and customs. Similarly, the County is responsible for policies and customs of the HSD. *Dick* 562 F Supp. at 1095-96. Scott County, therefore will be liable if Morris, Tietz, or the HSD established policies or customs which caused violations of plaintiffs' rights. Thus granting Scott County's motion for summary judgment prior to plaintiffs' having the opportunity to conduct discovery would be inappropriate. Scott County is, however, entitled to partial summary judgment on the issue of punitive damages because punitive damages are not recoverable against municipalities under section 1983. *Newport*, 453 U.S. at 271.

F. Guardians

After adult suspects were arrested on charges of sexually abusing children, the Scott County Department of Human Services (HSD) immediately initiated neglect proceedings in family court under Minn. Stat. § 260.133 in order to separate the children from their parents. Pursuant to Minn. Stat. § 260.155, subd. 4, the Scott County Family Court appointed guardians ad litem (guardians) for children whose parents had been charged in neglect proceedings. That statute requires a family court to appoint a guardian to protect the best interests of a minor in neglect proceedings.

Defendants Diane Johnson, John Manahan, and Paul Thomsen all served as court appointed guardians. Defendants Johnson and Manahan are defendants in *Buchan* and *Brown*, while defendant Thomsen is a defendant in *Myers* and *Bentz*. Defendant Thomsen became the guardian for the Bentz children in January of 1984. Thomsen made his first appearance in that capacity in family court on January 25, 1984. *See In re Bentz Children*, Feb. 3, 1984 Order, at 1. Thomsen became the guardian for the Myers children in February of 1984. Thomsen made his first family court appearance in that capacity on February 13, 1984. *See In re Myers Children*, Feb. 23, 1984 Order, at 1.

Defendant Johnson assumed the role of guardian for the Brown

children on or about January 19, 1984. *See In re Brown Children*, Feb. 8, 1984 Order, at 1. Johnson became the guardian for the Buchan children on June 7, 1984. *See In re Buchan Children*, June 7, 1984 Order, at 1. In late 1984, defendant Manahan began to act as guardian for the Brown and Buchan children when Johnson was unavailable. Johnson was at times unavailable because she was in the latter stages of pregnancy during this period.

The following allegations of the Buchans against defendants Johnson and Manahan are virtually identical to all of the allegations against each guardian defendant.

> Defendants Diane Johnson and John Manahan are the court appointed guardians ad litem for the Buchans' children. Defendants Johnson and Manahan, in addition to the other acts alleged herein, also engaged in a pattern of activity which was coercive and abusive to the minors placed under their direction by the Court in violation of their legal duties, in that they also interrogated the Buchans' children in an attempt to elicit additional accusatory responses from them as well as permitting defendant Morris and defendants Wilker, Tafs and Dean to question and interrogate the children under circumstances where it was apparent that their emotional and psychological well-being was threatened. Defendants Johnson and Manahan permitted and participated in the isolation and confinement of the Buchans' children in an attempt to coerce them into making responses which would be favorable for the State's case against their parents.

Buchan Complaint ¶ 6. All plaintiffs who are suing guardians also allege that the guardians were part of the civil conspiracy in which defendant Morris recklessly sought arrests and convictions in order to legitimize the claims of a Jordan sex ring.

The guardian defendants argue that because they are court appointed officials, absolute judicial immunity shields them from all of plaintiffs' allegations. The Court agrees. Persons, governmental or otherwise, who are integral parts of the judicial process are entitled to absolute immunity from damage liability under 42 U.S.C. § 1983. *Briscoe v. LaHue*, 460 U.S. 325, 335-36 (1983).

Even before *Briscoe*'s pronouncements,[31] a number of courts had held that court appointed officials were entitled to absolute immunity. *E.g.*, *T & W Investment Company, Inc. v. Kurtz*, 588 F.2d 801, 802 (lOth Cir. 1978) (receivers); *Kermit Construction Corp. v. Banco Credito y Ahorro Ponceno*, 547 F.2d 1, 3 (1st Cir. 1976) (receivers); and *Ashbrook v. Hoffman*, 617 F.2d 474, 476-77 (7th Cir. 1970) (partition Commissioners). The Eighth Circuit, moreover, has cited with approval two cases in which court appointed officials were afforded absolute immunity from section 1983 damages. Lawyer *v. Kernodle*, 721 F.2d 632, 636 (8th Cir. 1983), *citing Bartlett v. Weimer*, 268 F.2d 860 (7th Cir. 1959), *cert. denied*, 361 U.S. 938 (1960); and *Burkes v. Callion*, 433 F.2d 318 (9th Cir. 1970) (per curiam), *cert. denied*, 403 U.S. 908 (1971). In *Bartlett*, the court concluded that a physician appointed by the probate court to assess the mental health of the plaintiff was absolutely immune from a section 1983 action. The plaintiff alleged that the physician was part of a conspiracy to maliciously prosecute the plaintiff and to falsely commit plaintiff to a mental institution. *Bartlett*, 268 F.2d at 861. The court ruled that the probate court appointed the physician as an officer of the court to render a medical opinion, and that while acting in such capacity, the physician was protected by the absolute immunity enjoyed by judges and other judicial officers. *Bartlett*, 268 F.2d at 862. Similarly, the court in *Burkes*, 433 F.2d at 319, concluded that court appointed psychiatrists who gave medical reports to the trial court were entitled to absolute immunity.[32]

Subsequent to the Supreme Court's decision in *Briscoe*, the United States Court of Appeals for the Sixth Circuit applied *Briscoe* in holding that a court appointed guardian ad litem was entitled to absolute immunity in a section 1983 action. *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984). The court stated that the

---

[31] *Briscoe* held that all trial witnesses, including police officers, were absolutely immune from damage liability under section 1983 for their testimony given at trial.

[32] The Ninth Circuit reaffirmed its *Burkes* holding in *Franklin v. State of Oregon, State Welfare Division*, 662 F.2d 1337,1345 (9th Cir. 1981).

individual

> who functioned as guardian ad litem . . . must act in the best interests of the child he represents. Such a position clearly places him squarely within the judicial process to accomplish that goal.

Kurzawa, 732 F.2d at 1458.

While *Kurzawa* is authority precisely on point, all plaintiffs attack the soundness of this decision. In assailing *Kurzawa*, some plaintiffs point to the Supreme Court's statement in *Tower v. Glover*, 104 S.Ct. 2820, 2826 (1984), that Congress, and not the courts, is the body to establish new immunities for section 1983 actions. The *Tower* Court declined to grant absolute immunity to a public defender who allegedly conspired with state officials to convict the plaintiff. The Supreme Court reached this decision only after concluding that no immunity for public defenders existed at common law in 1871, and therefore the Congress which passed the Civil Rights Act could not have intended that such an immunity exist for section 1983 actions. *Tower*, 104 S.Ct. at 2825.

Based on *Tower*, plaintiffs argue that a court granting the guardians absolute immunity would constitute improper judicial creation of a new section 1983 immunity. Yet, when the Supreme Court has found that Congress intended section 1983 to encompass common law immunities prevalent at the time of the act's passage, the Supreme Court has recognized immunities under section 1983. *Tower*, 104 S.Ct. at 2825. The Supreme Court has recognized these immunities in spite of the fact that "[o]n its face § 1983 admits no immunities." *Tower*, 104 S.Ct. at 2825. The Supreme Court has held, moreover, that the common law of 1871, and thus section 1983, provided absolute immunity for all persons who were integral parts of the judicial process. *Briscoe*, 460 U.S. at 335.

Thus, to conclude that a guardian is entitled to absolute immunity would not be to establish a new type of immunity against the dictates of *Tower*. Rather, protecting guardians with absolute immunity would simply be an instance of determining the contours of the already established immunity for persons acting as integral parts of the judicial process.

Plaintiffs put forth an additional argument challenging the valid-

ity of *Kurzawa*, as they claim that *Kurzawa* reads *Briscoe* much too broadly. *Briscoe* held that a police officer testifying at a trial enjoyed absolute witness immunity for his testimony, but a number of circuit courts have limited the application of *Briscoe*. In *Wheeler v. Cosden Oil and Chemical Co.*, 734 F.2d 254, 261 (5th Cir.), *mod. on other grounds*, 744 F.2d 1131 (1984), the court ruled that *Briscoe*'s absolute immunity for a witness' testimony at trial did not apply to one who knowingly gave false testimony at a probable cause hearing. Another court declared that *Briscoe*'s witness immunity did not extend to cover a witness engaged in an extra-judicial conspiracy with a prosecutor to give false testimony. *San Filippo v. U.S. Trust Co. of New York, Inc.*, 737 F.2d 246, 255 (2d Cir. 1984), *cert. denied*, 105 S.Ct. 1408 (1985). Finally,*Krohn v. United States*, 742 F.2d 24, 31 (1st Cir. 1984), stated that *Briscoe* did not call for the granting of absolute immunity to a law enforcement officer who allegedly made intentional misrepresentations in a search warrant affidavit.

The Court agrees with the decisions which hold that *Briscoe*'s witness immunity applies only to testimony at trial and not testimony in other proceedings. Such a narrowing of the holding in *Briscoe*, however, does not negate *Kurzawa*'s reliance on *Briscoe*. *Kurzawa* concluded that guardians ad litem are entitled to absolute immunity because they are integral parts of the judicial process. *Kurzawa*, 732 F.2d at 1458. The determination of whether a guardian functions as an integral part of the judicial process does not depend on the scope of the witness immunity created in *Briscoe*.

The conclusion that guardians are integral parts of the judicial process is sound. Minn. Stat. § 260.155, subd. 4(a) requires that the family court appoint a guardian ad litem to protect the interests of the children in neglect or dependency proceedings. In a similar context (guardians for minors in probate proceedings), the Minnesota Supreme Court stated that a guardian is a fiduciary and an officer of the appointing court, subject to the orders and directions of that court. *Hoverson v. Hoverson*, 12 N.W.2d 497, 500 (Minn. 1943). Thus, the Court concurs with *Kurzawa*'s holding that court appointed guardians are entitled to absolute immunity.

Nevertheless, plaintiffs argue that even under *Kurzawa*, the guardian defendants should not prevail on the basis of absolute immunity. The guardians purportedly acted as investigators by attempting to elicit incriminating responses from the children, and by facilitating other defendants' attempts to elicit such responses. Plaintiffs reason that in acting as investigators, the guardians were acting beyond their duties as guardians, and that absolute immunity will therefore not protect them.

These allegations, however, are actually assertions that the guardians committed transgressions while performing their functions as guardians. Court orders directed guardians, or their designee, to be present at all interviews of the children. *E.g.*, *In re Myers Children*, Feb. 23, 1984 Order, at 2. The family court also gave the guardians the right to participate in all interviews of the children, to the extent necessary to protect the children's best interests. *In re Kath Children*, Jan. 23, 1984 Stipulation, at 2 (this stipulation applied to nine family court cases, including *In re Bentz Children*). Thus, even if the guardian defendants committed these alleged acts, they would have done so while performing their duties as guardians.

The cases cited with approval by the Eighth Circuit in *Lawyer*, moreover, indicate that absolute immunity protects the guardian defendants from plaintiffs' accusations. In both *Bartlett* and *Burkes*, the court appointed doctors allegedly lied. Yet the *Bartlett* court reasoned that because the physician was functioning in his capacity as a court appointed physician, he was entitled to absolute immunity. *Bartlett*, 268 F.2d at 862. *Accord Burkes*, 433 F.2d at 319. Obviously, the duties of these doctors did not include lying, but the courts granted them absolute immunity because their purported transgressions were part of their functions as court appointed officials.

Finally, plaintiffs argue that the guardian defendants cannot prevail on the basis of absolute immunity because the guardians conspired with other defendants. This reasoning is unpersuasive. In *Bartlett* the court granted the court appointed physician absolute immunity in spite of the plaintiff's charge that the physician had conspired to maliciously prosecute and falsely commit the plaintiff.

Bartlett, 268 F.2d at 861. Thus, plaintiffs' allegations of conspiracy do not defeat the guardians' defense of absolute immunity, and absolute immunity shields the guardian defendants from all of plaintiffs' claims.

G. Therapists

A number of therapists who dealt with alleged child abuse victims,[33] are also named as defendants in various Scott County cases. Most of these therapists were appointed by the Scott County Family Court; one therapist was not a court appointed official; and the record is unclear as to whether one therapist was court appointed.

1. Court Appointed Therapists

After the children of accused sexual abusers were separated from their parents, the Scott County Family Court appointed therapists for the children. Minn. Stat. § 260.151, subd. 1, provides that a family court may appoint a duly qualified physician, psychiatrist, or psychologist to examine any minor under its jurisdiction. The following court appointed therapists are defendants in Scott County cases: Michael Shea, Leslie Faricy, Susan Phipps-Yonas, and Thomas Price.

Shea is a defendant in *Bentz* and *Buchan*, while Faricy is a defendant in *Bentz*.[34] With regard to the Bentz children, the family court directed therapist Faricy to evaluate and determine the psychological needs of the children. iIn re Bentz Children i, Feb.3, 1984 Order, at 2. The order named only Faricy, but defendant Shea, who is Faricy's partner, also had contact with the children. The family court was aware that both Faricy and Shea were dealing with the children. *See In re Bentz Children*, Memorandum accompany-

---

[33] One therapist also conducted an adverse psychological interview of two adults in anticipation of the adults' upcoming criminal trial.

[34] In each of these cases, the professional association to which Shea and Faricy belong, Shea & Associates, P.A., is also a defendant.

ing Aug. 10, 1984 Order. In addition to his involvement with the Bentz children, Shea performed an adverse psychological interview of Donald and Cindy Buchan in preparation for the impending Buchan criminal trial.

In *Brown*, the sole therapist defendant is Phipps-Yonas.[35] The order in the Brown family court proceeding mandated that defendant Phipps-Yonas evaluate and give appropriate counseling to the Brown children. *In re Brown Children*, Feb. 8, 1984, Order, at 3.

Defendant Price[36] is a defendant in *Myers*, *Lallak*, and *Buchan*. Price was a court appointed official in the *Myers* family court matter, but he did not serve in such capacity with respect to the Lallak or Buchan children. Price states that he had no contact with the Lallak children, and that his only involvement with the Buchan children was one twenty-minute interview of one of the Buchans' daughters. Price aff. ¶ 7-9. The family court directed defendant Price to evaluate the Myers children and to determine their counseling needs, and other issues which needed to be addressed. *In re Myers Children*, Feb. 23, 1984 Order, at 2. Subsequent to the commencement of the *Myers* family court proceeding, and subsequent to Price's appointment, the Myers children implicated a variety of individuals as child sex abusers. The statements of the Myers children later formed the basis for the arrest of, inter alia, Jane Myers, the Lallaks, and the Buchans.

The plaintiffs allege that the therapist defendants provided Morris with psychological evaluations of the children of the plaintiffs. They further charge that the therapists interrogated the children, and psychologically manipulated them to transmit confirmation of allegations against the adult plaintiffs. *E.g.*, *Bentz* Complaint ¶ 6; *Buchan* Complaint ¶ 7. Plaintiffs' briefs elaborate on their theory against the therapists. Instead of providing therapy and independent counseling to the children, argue plaintiffs, the therapists became part of the investigatory team which sought to obtain

---

[35] Phipps-Yonas and Price, P.A., is also a defendant.

[36] Phipps-Yonas and Price, P.A. is also named as a defendant in these cases.

convictions for child sexual abuse. The therapists purportedly agreed with other investigators to develop evidence against the adult plaintiffs in reckless disregard of the truth. Plaintiffs reason that the therapists isolated the children from their parents to make the children emotionally dependent upon Morris and other investigators. In this way, conclude plaintiffs, the children would be responsive to their investigators and would thus provide the desired accusatory statements.

In support of their allegations that defendant Price acted as an investigator, plaintiffs rely on findings of the family court which criticize Price's conduct in dealing with the children. *In re Myers Children*, Feb. 11, 1985 Order, findings 14 and 18. An additional allegation specific to defendant Price is that although he held himself out as a "psychotherapist" he was actually practicing psychology without a license. *E.g.*, *Buchan* Complaint ¶ 7. Defendant Price states that he is not a psychologist, and his business stationery and his own affidavit refer to him as a psychotherapist. Price aff. ¶ 1, and exh. A. Price states that he engaged a licensed psychologist, Dr. Judy Bevans, to perform the psychological tests of the Myers children. Price aff. ¶ 3.

The Court's prior discussion regarding court appointed guardians indicates that court appointed therapists are protected by absolute immunity while they function as court appointed officials. The Eighth Circuit has cited with approval two section 1983 cases which gave court appointed doctors and psychiatrists absolute immunity. *Lawyer v. Kernodle*, 721 F.2d 632, 636 (8th Cir. 1983), *citing Bartlett v. Weimer*, 268 F.2d 860 (7th Cir. 1959), *cert. denied*, 361 U.S. 938 (1960) and Burkes v. Callion 433 F.2d 318 (9th Cir. 1970) (per curiam) cert. denied, 403 U.S. 908 (1971). The allegations against defendants Faricy, Phipps-Yonas, and the Bentzes' allegations against defendant Shea, all constitute claims that these defendants committed abuses while functioning as court appointed therapists. These defendants are thus cloaked with absolute immunity.

The Court originally rejected defendant Price's claim to absolute immunity, but upon reconsideration, the Court will grant his mo-

tion for summary judgment on the basis of this defense. True, Minn. Stat. § 260.151, subd. 1, calls for court appointment of a qualified physician, psychiatrist, or psychologist, and Price is not licensed in any of those disciplines. Nevertheless, the family court saw fit to designate Price a court appointed official. Even though the family court was later critical of Price's performance, his purported transgressions occurred while he was functioning as a court appointed official. Price, therefore, is protected by absolute immunity.

Defendant Shea's role in *Buchan* is somewhat different than the other therapist defendants. Shea did not have contact with the Buchan children, rather he conducted an adverse psychological interview and evaluation of Donald and Cindy Buchan in preparation for their impending criminal trial. Shea aff. ¶ 3. The record is unclear whether the trial court specifically named Shea to conduct the evaluation or whether the trial court merely allowed the county attorney's office to select its own expert to conduct the adverse examination. In either case, Shea is entitled to absolute immunity. If a court directed Shea to conduct an adverse mental exam, then Shea should be entitled to absolute immunity as a court appointed official. Shea would also be protected by absolute immunity if the court merely allowed the county attorney's office to select an expert of its choosing. Conducting an adverse mental examination in anticipation of trial is an activity in preparation for trial, and prosecutors enjoy absolute immunity for their trial preparation. *See Imbler v. Pachtman*, 424 U.S. 409, 431 n.33 (1976). Prosecutorial assistants also enjoy absolute immunity for actions which are within protected prosecutorial functions. *Lawyer*, 721 F.2d at 636; *Keating v. Martin*, 638 F.2d 1121, 1122 (8th Cir. 1980) (per curiam). In conducting the adverse examination for the county attorney's office, Shea would have assumed the role of prosecutorial assistant and thus Shea would enjoy absolute immunity. Because Shea would be protected by absolute immunity in either case, he is entitled to summary judgment in *Buchan*.

2. Noncourt Appointed Therapists

Noncourt appointed therapist Jane McNaught is a defendant in *Meger*. McNaught is a licensed consulting psychologist and she practices with an association known as the Center for Child and Family Therapy (Center) in Minneapolis. The Center is also a defendant in *Meger*. Defendant McNaught's initial involvement with the Meger family was in December of 1983. The Scott County Human Services Department (HSD) requested McNaught to conduct a psychological evaluation of the Megers' youngest son because the Meger children (two boys) had been identified as sexual abuse victims of James Rud. McNaught aff. ¶ 3; Morris aff. ¶ XXXIII. After her initial contact with the youngest son, McNaught states that she had no further involvement with the Meger children until July of 1984. McNaught aff. ¶ 4.

During the interim, from December until June of 1984, Scott County investigators continued questioning the Meger children. In early June of 1984, the Meger children purportedly accused their parents of abusing them.[37] Morris aff. ¶ XXXIII. Scott County officials separated the Meger children from their parents on June 5, 1984. Defendants state that Wanda Meger assented to a voluntary placement while Wanda Meger states she was pressured and misled into signing the placement agreement. Morris aff. ¶ XXXIII, exh. U; Wilker aff. ¶ XXXVII; Meger aff. ¶ 47-51.

Subsequently, Mary Tafs of HSD requested that McNaught perform therapy, counseling, and an evaluation for both Meger children. McNaught aff. ¶ 4; Morris aff. ¶ XXXIII. McNaught had sessions with these children in July and August of 1984. McNaught states that the Meger children described being sexually abused by Rud and by their parents. McNaught aff. ¶ 5. McNaught told Tafs of the children's statements in August of 1984, and recommended that the children not have contact with their parents until after the parents received treatment. McNaught aff. ¶ 6.

---

[37] Wanda Meger states that county officials only told her of accusations against her husband. Meger aff. ¶ 14, 17, 46.

The Scott County Attorney's office never criminally charged the Megers. After the Megers rescinded their voluntary placement agreement, the Scott County Attorney's office instituted neglect proceedings in a petition dated August 27, 1984. Wolf aff. exh. A. The petition contained information supplied by McNaught. Wolf aff. exh. A. McNaught states that she had no involvement in the decision to file the neglect petition. McNaught aff. ¶ 8.

Plaintiffs alleged that McNaught conspired with defendant Morris and others by providing false and misleading psychological evaluations and reports. Plaintiffs further allege that the tainted reports and evaluations were a result of defendant McNaught's coercive and intimidating techniques of interrogating the Meger children. Plaintiffs only reference to the Center is that defendant McNaught practices with the Center. *Meger* Complaint ¶ 9.

a. Color of State Law

In order to be subject to liability under section 1983, a defendant must act under color of state law. E.g., *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Defendant McNaught argues that as a therapist retained by HSD, she was not acting under color of state law. The Eighth Circuit's decision in *Lawyer v. Kernodle*, 721 F.2d 632 (8th Cir. 1983), however, indicates that McNaught was a state actor. In *Lawyer*, the court held that a private physician retained by the county coroner to perform autopsies was acting under color of state law. *Lawyer*, 721 F.2d at 635. The court reasoned that even though the doctor was a private individual, he was a state actor because he was performing official duties of the coroner, *Lawyer*, 721 F.2d at 635.

Similarly, McNaught was aiding HSD in the performance of its official duties. Minn. Stat. § 626.556, subd. 10(a), provides that a local welfare agency (such as HSD) must conduct an immediate assessment of child sexual abuse charges. The statute also requires that the agency offer protective social services to enhance the welfare of the abused child. Minn. Stat. § 626.556, subd. 10(a). HSD retained McNaught to perform an evaluation and provide

counseling to the children. Tasks such as these would also be performed by a psychologist who was an employee of HSD. *See* Kaufman aff. ¶ V. McNaught was thus aiding HSD in the performance of its statutory duties, and therefore she is a state actor.

An alternative basis for concluding that McNaught acted under color of state law is the clear rule that private individuals who willfully participate in joint action with government officials act under color of state law. *E.g.*, *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980). Defendant McNaught acknowledges this rule of law, but she argues that plaintiffs' claims of conspiracy are without merit. Defendant McNaught stresses that conclusory allegations of conspiracy, without references to material facts, are insufficient to state a claim. *Citing Slotnick v. Staviskey*, 560 F.2d 31, 33 (lst Cir. 1977), *cert. denied*, 434 U.S. 1077 (1978). There may be much to McNaught's questioning the existence of the purported conspiracy. However, the Megers' conspiracy allegations do delineate McNaught's alleged role in the conspiracy. McNaught supposedly conducted improper interviews of the Meger children in order to further the conspiracy to fabricate sexual abuse charges. While denying she committed these transgressions, McNaught acknowledges that she had contact with the Meger children. The Megers' accusations against McNaught are more specific than a mere statement that a conspiracy existed and that McNaught was involved in it. McNaught's purported acts are clear, and thus the allegations against her are sufficient to cause her to be treated as a state actor.

b. Absolute Immunity

While defendant McNaught concedes that she is not a court appointed official; she still argues that she is protected by absolute immunity. McNaught relies largely on statements in *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. 1984) which indicated that a psychologist and two psychiatrists who were not court appointed

were absolutely immune from suit.[38] In reaching this conclusion, the court drew upon *Briscoe v. LaHue*, 460 U.S. 325 (1983), which established absolute immunity for a witness testifying at trial. In *Kurzawa*, the state department of social services and the state courts used the findings of the psychologist and the two psyciatrists. The *Kurzawa* court reasoned that the psychologist's and psychiatrist's provision of information to these entities was analogous to the testimony of a witness, and therefore the psychologist and psychiatrists were entitled to absolute immunity based on *Briscoe*. *Kurzawa*, 732 F.2d at 1458.[39]

This aspect of *Kurzawa* is unsound. Initially, this pronouncement was clearly dicta, as the court had already dismissed the psychologist and psychiatrists on the basis of the statute of limitations. The *Kurzawa* court's analogy to a witness, moreover, is misplaced. A number of circuits have stressed that *Briscoe*'s absolute immunity is limited to trial testimony only. *E.g.*, *Wheeler v. Cosen Oil and Chemical Co.*, 734 F.2d 254, 261 (5th Cir.), *mod. on other grounds*, 744 F.2d 1131 (1984) (no absolute immunity for testimony at probable cause hearings); *Krohn v. United States*, 742 F.2d 24, 31 (1st Cir. 1984) (no absolute immunity for statements in search warrant affidavit). One of the rationales for limiting absolute witness immunity to actual trials is that only in such a setting do sufficient safe guards exist for developing the truth (*e.g.*, cross-examination). *Wheeler*, 734 F.2d at 261; *Krohn*, 742 F.2d at 31. Under this rationale, noncourt appointed psychologists should not be entitled to absolute witness immunity for information provided outside of trial setting. The *Kurzawa* court, therefore, incorrectly concluded that noncourt appointed psychiatrists and a psychologist were pro-

---

[38] As previously discussed, *Kurzawa* held that court appointed guardians ad litem were entitled to absolute immunity in section 1983 actions because guardians were integral parts of the judicial process. *Kurzawa*, 732 F.2d at 1458.

[39] The HSD defendants also pointed to these statements in *Kurzawa* in arguing that they were protected by absolute immunity.

tected by absolute immunity.[40] Consequently, McNaught cannot rely on this defense.

c. Qualified Immunity

Defendant McNaught asserts that even if she is not protected by absolute immunity, she is entitled to summary judgment on the basis of qualified immunity. McNaught, however, allegedly contributed to the infringement of the Megers' clearly established right to remain together as a family. Accordingly, McNaught cannot obtain summary judgment prior to discovery.

d. Lack of Causation

Regardless of her ability to prevail on immunity defenses, defendant McNaught asserts that her summary judgment motion should still be granted. Defendant McNaught argues that even if she acted improperly and plaintiffs' rights were infringed, she did not cause plaintiffs' injury. Defendant McNaught is correct that in order for her to be liable under section 1983, her transgressions must have a causal relationship to plaintiffs' injuries. *E.g.*, *City of Oklahoma City v. Tuttle*, 105 S.Ct. 2427, 2439 (1985) (Brennan, J., concurring); *Herrera v. Valentine*, 653 F.2d 1220, 1224 (8th Cir. 1981); *see also Hampton v. Mouser*, 701 F.2d 766, 767 (8th Cir. 1983) (per curiam). Defendant McNaught reasons that she did not cause the Megers to be separated from their children, since she did not relate the children's allegations of parental sexual abuse until after Wanda Meger voluntary placed the children in foster care. McNaught admits, however, that the information she gave to social worker Tafs was included in the August 27, 1984 neglect petition which commenced family court proceedings to remove the Meger

---

[40] Of course a noncourt appointed therapist, just like any other witness, would enjoy absolute immunity for any testimony given at a trial. *See Briscoe*, 460 U.S. at 334, 340-41. Here, the Megers are not seeking to hold McNaught liable on the basis of any trial testimony.

children.[41] McNaught states that even if the information she provided was false, the neglect petition still contained other information sufficient to establish probable cause. Thus, McNaught concludes that her actions could not have caused the separation of the Meger family.

The Meger neglect petition does contain accusations of parental child sexual abuse reported by individuals other than defendant McNaught, but her statements provide important corroboration. Even if McNaught's statements were not necessary to the probable cause determination, her subsequent interviews with the children, if coercive, could have contributed to the continued separation of the Meger family. Thus, concluding at this juncture that McNaught could not have caused injury to plaintiffs would be inappropriate.

e. The Center

The association with which defendant McNaught practices, the Center, is also a defendant in *Meger*. The Center is an association of independent practitioners providing psychological and counseling services. McNaught aff. ¶ 10. The Center is essentially an office sharing arrangment, as the professionals at the Center have their own independent practices and clientele. The professionals at the Center do not exercise professional control over each others' decisions. McNaught aff. ¶ 10.

The Center is named as a defendant in this action apparently because of plaintiffs' allegation that McNaught practices with the Center. Plaintiffs, however, make no other reference to the Center in their complaint or in their brief. The Center's contention that its members do not direct or exercise control over their fellow members is not contested. The mere fact that defendant McNaught practices with the Center is not a sufficient basis for subjecting the Center to section 1983 liability, *see Ashbrook v. Hoffman*, 617 F.2d 474, 477-78 (7th Cir. 1980), and thus the Court granted the Center's motion

[41] The County filed a neglect petition after the Megers rescinded their voluntary agreement.

for summary judgment.

3. DeVries

The remaining therapist defendant, Susan DeVries, is a defendant in only *Buchan*. According to DeVries, her initial appointment concerning the Buchan children was on June 22, 1984, when social worker Dorris Wilker provided her with background information. (DeVries briefly met one of the Buchan daughters that day.) DeVries aff. ¶ 3, 6. This meeting was subsequent to the arrest of the parents and the children's removal from the home on June 4, 1984.

DeVries states in her brief that she "was reguested to provide information" regarding the psychological well-being of the Buchan children, but the record is unclear as to who asked DeVries to contact the Buchan children. At whose bequest DeVries saw the children is an important question in determining whether she is entitled to absolute judicial immunity.

In her affidavit, DeVries indicates that the guardian ad litem for the Buchan children was the first to request that DeVries counsel and evaluate the Buchan children. DeVries aff. ¶ 2. DeVries, however, testified at a family court hearing that HSD referred the Buchan case to her. *In re Buchan Children*, Transcript of DeVries Testimony, Aug. 28, 1984, at 46. DeVries indicated that social worker Mary Tafs was the individual who asked her to contact the Buchan children. *Id.* at 48.[42]

This evidence is conflicting on the issue of whether DeVries was a court appointed therapist, and orders of the Scott County Family Court do not resolve the issue. In the family court proceedings regarding the Bentz, Brown, and Myers children, the initial order of

---

[42] In opposing DeVries' motion, the Buchans claimed that social worker Wilker requested DeVries to investigate whether sexual abuse had occurred, and that DeVries testified about this request at the Buchan family court hearing. At the time the Buchans made these contentions, the transcript of the family court hearing was unavailable. The Court did not receive a copy of the transcript until approximately one week ago. DeVries actually testified that Tafs gave her instructions which included determining, if possible, whether sexual abuse had occurred. *In re Buchan Children*, Transcript of DeVries Testimony, Aug. 28, 1984, at 48.

the family court designated that a therapist contact the children. *In re Bentz Children*, Feb. 3, 1984 Order, at 2; *In re Brown Children*, Feb. 8, 1984 Order, at 3; *In re Myers Children*, Feb. 23, 1984 Order, at 2. By contrast, the initial family court order regarding the Buchan children does not direct DeVries or any other therapist to see the children. *In re Buchan Children*, June 7, 1984 Order. A family court order issued five months later does direct the Buchan parents to meet with their daughter's therapist, defendant DeVries, for supervised visitation. *In re Buchan Children*, Nov. 15, 1984 Order, at 2. This order, however, does not necessarily indicate that the family court was designating DeVries a court appointed official. Another possibility is that the family court, being aware that HSD had retained DeVries, simply directed the Buchans to meet with the HSD retained therapist. Even if this family court order could be construed as a court appointment, DeVries would not be protected by absolute immunity for her allegedly improper interviews of the Buchan children from June until November, 1984. Thus, the Court cannot conclude on the record before it that DeVries is cloaked by absolute immunity for her purported transgressions.

Neither does qualified immunity provide a basis for granting DeVries' summary judgment motion at this juncture. DeVries supposedly aided in the fabrication of false allegations of sex abuse against the Buchan parents, and these allegations could have contributed to the continued separation of the Buchan family. Such conduct would violate the Buchans' clearly established right to remain together as a family, and thus summary judgment is inappropriate prior to discovery.

H. Jordan Defendants

In *Lallak*, the plaintiffs have included as defendants a number of individuals and entities associated with the City of Jordan. These defendants are the City of Jordan, Jordan City Council, former Mayor of Jordan Gail Anderson, current Mayor Donald Tillman, the Jordan Police Department, Jordan Police Chief Alvin Erickson, Jordan Police officer Larry Norring, and other unknown

employees of the Jordan Police Department.[43]

The Jordan sex ring investigation commenced on September 26, 1983, when Chris Brown contacted the Jordan Police Department because she feared that her children had been sexually abused. The Jordan Police Department assigned officer Larry Norring to investigate these charges. Erickson aff. ¶ 3, 4. Plaintiffs assert that Norring did not have the necessary and proper credentials to be a police officer at this time, and that he had no training in child abuse investigations. Norring was the only Jordan police officer involved in these investigations. Erickson aff. ¶ 8; Norring May 12, 1985 aff. ¶ 9. Initially, Jordan Police Chief Erickson requested and obtained investigative assistance from the Minnesota Bureau of Criminal Apprehension (BCA). The BCA, though, later withdrew in favor of the Scott County Sheriff's Department and Attorney's office. Erickson aff. ¶ 6, 7. In response to a request by County Attorney Morris, Erickson issued an order assigning Norring to the Scott County Attorney's office to assist in the investigation. Erickson aff. ¶ 9.

Prior to Norring's involvement in the Jordan sex ring investigation, the Lallaks had begun to complain to the Jordan City Council about improprieties in the Jordan Police Department. The Lallaks started airing their grievances in the spring of 1983, and on or about August 1, 1983, the Lallaks submitted a petition to the council calling for an investigation of the Jordan Police Department. The petition concerned allegations that Erickson and Norring misused departmental property. In addition, Charles Lallak questioned the status of Norring's certification as a law enforcement officer at a February 6, 1984 city council meeting. *See* Lallaks' Answers to Interrogatory 4. The Lallak brief contends that after this council meeting both defendants Erickson and Norring stated to Charles Lallak that they would get Lallak for filing the petition. (The affidavit states only that "a Jordan police officer [indicated that] the Jordan police would get" Lallak. See Lallak aff. ¶ 3.)

---

[43] The Court will occasionally refer to these defendants collectively as the "Jordan defendants."

Also in early February of 1984, Norring and Scott County deputy sheriffs were interviewing the children of Jordan police officer Greg Myers. The Jordan defendants state that when the children mentioned Greg Myers as a possible child sexual abuser, Norring left the room immediately. See Norring May 12, 1985 aff. ¶ 10, 11. Upon learning that one of his officers was a potential subject of charges, Erickson informed Morris that the Jordan Police Department would not be involved in the Meyers investigation. Morris agreed that this was the proper procedure. Erickson aff. ¶ 10.

Greg Myers was arrested on February 6, 1984, and the Meyers children were taken from their home that same day. In the ensuing months, the Myers children were interviewed, and in May of 1984, the children implicated the Lallaks as child sexual abusers. Based on these allegations, Scott County deputies arrested the Lallaks on May 23, 1984.

The case against the Lallaks was related to the case against the Myerses. The Jordan defendants state that once the Myers children first raised the possibility that

Greg Myers had sexually abused children, no Jordan police officer ever interviewed the Myers children. According to the Jordan defendants, because the Jordan police withdrew from the Myers investigation, the Jordan police were not connected in any way with the Lallak investigation. No Jordan police official, conclude defendants, played any role in developing the information which formed the basis of the charges against the Lallaks.

The Jordan defendants also state that City of Jordan governmental officials had no involvement in the criminal cases. Defendants add that neither the city council nor the mayor's office had formal or informal contact with any Scott County authorities requesting the investigation of the Lallaks or any other specific individuals. Defendants do admit that the council was aware of public concern regarding overtime payments to Norring. Plaintiffs point to the council's approval of overtime for Norring as an indication that the council was aware of Norring's involvement in the investigation. Plaintiffs further contend that Erickson and the council were aware

that Norring lacked proper credentials and experience.

The major theme of plaintiffs' argument against the Jordan defendants is that Erickson and the City of Jordan were grossly negligent or exhibited deliberate indifference to plaintiffs' rights by assigning inexperienced, ill-trained, and unlicensed officer Norring to the Jordan sex ring investigation. Yet for the Jordan defendants to be liable under section 1983, their acts must have some causal relationship to plaintiffs' injuries. *E.g.*, *City of Oklahoma City v. Tuttle*, 105 S.Ct. 2427, 2439 (1985) (Brennan, J., concurring); *Herrera v. Valentine*, 653 F.2d 1220, 1224 (8th Cir. 1981); *See also Hampton v. Mouser*, 701 F.2d 766, 767 (8th Cir. 1983) (per curiam). The Jordan defendants contend that neither Norring, nor any other Jordan defendant, was involved in the phase of the Jordan sex ring investigation which led to the charges against the Lallaks. Erickson aff. ¶ 11; Norring May 12, 1985 aff. ¶ 12. If Norring did not participate in formulating the charges against the Lallaks, his purported lack of training and supervision could not have caused plaintiffs' injuries. Similarly, the alleged transgressions of the other Jordan defendants could not have contributed to the harm plaintiffs suffered if no Jordan defendant was involved in the investigation which led to the Lallaks' arrest.

Plaintiffs did not respond to the contention that no Jordan defendant participated in the investigation of the Lallaks. Neither in their brief nor at oral argument did plaintiffs attempt to rebut defendants' lack of causation argument. In fact, plaintiffs have not even alleged specific facts to support their assertions that the Jordan defendants violated plaintiffs' rights. In response to interrogatories, plaintiffs do state that the Jordan defendants acted in reprisal against plaintiffs because of plaintiffs' accusations against the Jordan police at city council meetings, but plaintiffs fail to specify what actions the Jordan defendants supposedly undertook. Plaintiffs merely list the litany of violations asserted against Morris and state that the Jordan defendants conspired with the other defendants. See Lallaks' Answers to Interrogatory 4.

With regard to the Jordan defendants, plaintiffs have, in essence, simply alleged that a conspiracy existed and that the Jordan defen-

dants were a part of it. Plaintiffs have not attempted to delineate the Jordan defendants' role in the conspiracy. Such conclusory allegations of conspiracy without allegations of specific facts are insufficient to state a claim under section 1983. *Slotnick v. Staviskey*, 560 F.2d 31, 33 (1st Cir. 1977), *cert. denied*, 434 U.S. 1077 (1978); *see also Ellingburg v. King*, 490 F.2d 1270, 1271 (8th Cir. 1974) (per curiam) (broad and conclusory allegations unsupported by factual allegations are insufficient to state a claim under section 1983). Since the plaintiffs did not put forth arguments or allegations indicating how the Jordan defendants could have caused plaintiffs' injuries, they are entitled to summary judgment. The Court originally granted summary judgment in favor of all Jordan defendants except defendant Norring. Upon reconsideration, the Court concludes that the rationale for granting the former motions indicates that defendant Norring is entitled to summary judgment as well.

V. CONCLUSION

Virtually all defendants in the Scott County cases moved for dismissal and/or summary judgment prior to discovery. The Court granted some of these motions and denied others.[44] In this Memorandum Opinion the Court vacates its previous denial of summary judgment motions on behalf of Thomas Price, Phipps-Yonas and Price, P.A., and Larry Norring.

Defendants who continue to be parties in these cases assert that plaintiffs' accusations are wholly unfounded. While this may or may not be the case, the Court cannot, at this juncture, simply accept defendants' version of the facts as true. Plaintiffs are claiming violations of clearly established rights, and thus they are entitled to conduct discovery to develop their claims against the remaining defendants.

Based on the foregoing, **IT IS ORDERED** that the Court's order of June 10, 1985, denying the motions for summary judgment on

---

[44] See Appendix attached.

behalf of Thomas Price and Phipps-Yonas and Price, P.A., in *Myers* (CIVIL 4-84-1066), *Lallak* (CIVIL 4-84-1230) and Buchan (CIVIL 3-84-1615); and the Court's order of June 10 1985 denying the motion for summary judgment on behalf of Larry Norring in *Lallak* (CIVIL 4-84-1230), are vacated. Said motions for summary judgment on behalf of defendants Thomas Price, Phipps-Yonas and Price, P.A., and Larry Norring are hereby granted.

Judge Harry H. MacLaughlin
United States District Court
DATED: October *1* , 1985

APPENDIX

The Court has granted the summary judgment motions of the following defendants:

Guardians Ad Litem:

Diane Johnson and John Manahan in *Buchan* (CIVIL 3-84-1615) and *Brown* (CIVIL 3-85-337)

Paul Thomsen in *Myers* (CIVIL 4-84-1066) and *Bentz* (CIVIL 3-85-336)

Therapists:

Thomas Price and Phipps-Yonas & Price, P.A. in *Myers*, *Lallak* (CIVIL 4-84-1230), and *Buchan*[1]

Michael Shea and Shea & Associates, P.A. in *Buchan* and *Bentz*

Center for Child & Family Therapy in *Meger* (CIVIL 3-85-138)

Leslie Faricy in *Bentz*

Susan Phipps-Yonas and Phipps-Yonas & Price, P.A. in *Brown*

Jordan Defendants:

City of Jordan, Jordan City Council, former Mayor Gail Anderson, Mayor Donald Tillman, Jordan Police Department, Jordan Police Chief Alvin Erickson, and Larry Norring[2] in *Lallak*

Scott County Board of Commissioners:

Scott County Board of Commissioners in *Lallak*

---

[1] The Court originally denied these motions.

[2] The Court originally denied defendant Norring's motion.

The Court granted summary judgment in favor of all the defendants in *Gould*. These defendants are:

Gould

County of Scott, R. Kathleen Morris, individually and as County Attorney, City of Jordan, City of Jordan Police Department, Sheriff of Scott County[3]

The Court granted defendant Earl Barrett's motion to dismiss in *Bentz* in an order dated August 20, 1985. Barrett is the director of a halfway house in which one of the Bentz children stayed.

The Court has denied the motions to dismiss or for summary judgment of the following defendants:

County Attorney:

R. Kathleen Morris in *Myers*, *Rank* (CIVIL 4-84-1214), *Lallak*, *Buchan*, *Meger*, *Bentz*, and *Brown*

Scott County Deputy Sheriffs:

Michael Busch and Patrick Morgan in *Myers*, *Lallak*, *Buchan*, *Meger*, and *Bentz*

Norman Pint in *Myers*, *Lallak*, *Buchan*, and *Bentz*

David Einertson in *Lallak*

Therapists:

Susan DeVries in *Buchan*

Jane McNaught in *Meger*

---

[3] The Court originally denied the motions of Morris and the Sheriff in *Gould*.

Human Services Department:

Scott County Human Services Department in *Myers*, *Lallak*, *Buchan*, *Meger*, *Bentz*, and *Brown*

Margaret Subby and Doris Wilker in *Myers*, *Buchan*, *Meger*, *Bentz*, and *Brown*

Joel Kaufman in *Meger*

Rachel Paff in *Lallak*

Mary Tafs and Judy Dean in *Buchan*

Sheriff:

Douglas Tietz in *Myers*, *Lallak*, and *Buchan*

Scott County:

Scott County in *Myers*, *Rank*, *Lallak*, *Buchan*, *Meger*, *Bentz*, and *Brown*

Plaintiffs have voluntarily dismissed the following defendants:

Scott County Board of Commissioners:

Scott County Board of Commissioners in *Meger*

Scott County Commissioners:

Anthony Worm, Dick Mertz, Mark Stromwall, Roland Boegeman, and William Knoiarski, individually and as Scott County Commissioners in *Rank*

PROTECTIVE SERVICES FOR CHILDREN

9560.0250 SCOPE.

Parts 9560.0250 to 9560.0300 govern the administration and provision of protective services to children through local social services agencies.

Statutory Authority: *MS s 256.01 subds 2,4,- 256E.05 subd 1; 257.175*

9560.0260 PURPOSE.

The purpose of a child protective service system is to carry out community responsibility for safeguarding the rights and welfare of children whose parents/caretakers are unable or unwilling to do so, or whose parents'/caretakers' activity violates their children's rights or jeopardizes their welfare.

Statutory Authority: *MS s 256.01 subds 2,4; 256E.05 subd 1; 257.175*

9560.0270 DEFINITIONS.

Subpart 1. **Local social service agency.** "Local social service agency" means the local agency under the authority of the county welfare or human services board or county board of commissioners which is responsihle for social services.

Subp. 2. **State agency.** "State agency" means the Minnesota Department of Human Services.

Statutory Authority: *MS s 256.01 subds 2,4; 256E.05 subd 1; 257.175*

History: *L 1984 c 654 art 5 s 58*

9560.0280 DELIVERY OF CHILD PROTECTIVE SERVICES.

Subpart 1. **Basic requirement.** Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

Subp. 2. **Complaints of neglect or abuse.** The local social service agency must accept all complaints alleging that a child has been

physically or sexually abused or neglected. Neglect includes conditions or actions which threaten either the child's physical health or the child's mental health. Upon receiving such complaints, the local social service agency shall immediately notify the local police or sheriff's department.

A. All reports shall he assessed at the time they are received to determine the agency's initial response.

For complaints alleging that a child is abandoned, life threatened, or likely to experience physical injury due to abuse, an immediate on site contact with the family and/or child is required.

When a child is not in need of immediate care but is allegedly physically or sexually abused, the local social service agency shall contact the family within 24 hours.

When child is not in need of immediate care but is allegedly neglected, the local social service agency shall contact the family within 72 hours.

Reports for which no response is required include those which do not fall within the parameters of child maltreatment (although a referral to a more appropriate agency may be made); those which do not contain enough information to be investigated; or those which concern a complaint that has recently been investigated and determined to be unsubstantiated.

B. Where contacts with the family are required the child protection worker shall assess the validity of the complaint.

C. If upon the initial assessment there appears to be substance to the complaint, the child protection worker shall attempt to determine the following:

(1) the risk posed if the child or children involved remain in the home environment;

(2) the current physical and/or emotional condition of the child or children involved, as well as an assessment of prior injuries;

(3) the name, address, age, sex, and relationship of the alleged perpetrators to the involved child/children; and

(4) family composition, including the name, age, and sex of the child or children involved.

D. If the child protection worker determines that neither

neglect nor abuse are present but that the family may be experiencing problems, the worker may:

(1) offer the family such services as may be appropriate; and

(2) inform the family of the agency's availability and willingness to work with the family upon request.

E. If the child protection worker determines that the child is in need of immediate care due to circumstances or surroundings that jeopardize the child's physical or mental health or welfare, the parents must be given the opportunity to voluntarily place the child or seek an alternative that, in the worker's judgment, assures the safety of the child.

F. If when given the opportunity, the parents are unwilling or unable to cooperate, the child protection worker shall petition the court for immediate custody of the child or seek the assistance of a peace officer in taking the child into custody.

G. The local social service agency shall file a petition in juvenile court for an extension of time to hold a child in a shelter care facility longer than 72 hours excluding weekends or holidays when the agency determines that it is necessary to detain a child for his or her own protection.

H. When placing a child in a shelter care facility, the local social service agency shall determine whether disclosure of the location of the facility to the child's parent, guardian, or custodian may place the child in danger. The decision of whether or not to disclose the location shall then be containcd in the written report to the court and to the facility supervisor.

Subp. 3. **Keeping the child in his house.** Where the need for protective intervention has been established, the local social service agency shall, whenever possible, provide services that preserve the child within the family unit while at the same time assuring the child a safe environment. Such services may include, but are not limited to: family counseling, homemaking services or in-home services, and referral to parent support organizations to courses in parenting or child care such as may be available in the community.

Subp. 4. **Court intervention.** If services necessary to provide the child a safe environment are rejected, the child protection worker shall petition the court for authorization to intervene.

Subp. 5. **Summary of agency's findings.** Following the assessment of a child abuse or neglect report, the local social service agency shall, when requested, provide the reporting party a summary of the agency's findings. The summary shall be limited to:

A. the agency's determination that the report was either substantiated, unsubstantiated, or presently inconclusive;

B. the agency's intention to provide, or not provide, or refer to, remedial services; and

C. the local social service agency may deny the request of the reporting party if it determines that disclosure of the information is detrimental to the child's best interests.

Subp. 6. **Nonemergency removal from home.** When the need for removal of a child from its home is considered necessary but not emergent, the local social service agency shall request permission of the juvenile court for sufficient time to place the child in an orderly fashion.

When a child is under legal custody and has been removed from its home, the local social service agency shall obtain the consent of the child's parents for major decisions affecting the child. If the parents fail to consent, and the decision is essential to the child's health and safety, a court order may be obtained.

The local social service agency shall obtain the written consent of the child's parents, and a court order, if a child under legal custody is to be placed in a facility outside the state. If the parents refuse or fail to give consent, a court order is sufficient.

The local social service agency shall provide the court written reports and recommendations at such times as the court may direct or prior to the expiration of any order giving it responsibility for a child. Such reports shall contain information sufficient to support the recommendation and to enable the court to make a decision in the child's best interest.

Subp. 7. **Prostitution and obscenity.** Local social service agency responsibility in accepting reports of acts of prostitution or involvement in the production of obscene material or performances by persons under 18 years of age.

Upon receiving a report of juvenile prostitution or juveniles

involved in the production of obscene material or performances, the local social service ageney shall:

A. assess the victim's circumstances to determine the need for protective services;

B. provide counseling and assistance to the victim in order to encourage and support her/him in discontinuing in prostitution; or involvement in the production of obscene acts or material;

C. offer the victim and the victim's family such services as may be needed to protect the victim, and prescrve or reestablish family relationships; and

D. if such services are rejected, inform the victim and family of the agency's responsibility and authority to seek juvenile court intervention.

If immediate custody is necessary to protect the victim or to restrain the victim from engaging in prostitution, or involvement in the production of obscene acts or material, the protective service worker shall request a juvenile court order granting the agency temporary legal custody.

FOSTER CARE FOR CHILDREN

9560.0500 SCOPE.

Parts 9560.0500 to 9560.0670 govern the administration and provision of foster care services to children and their families by the local social service agency when the agency has placement and supervisory responsibilities.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.174; 260.40; 393.07*

9560.0510 PURPOSE OF FOSTER CARE SERVICES.

The purpose of foster care services to children is to provide substitute family or group care for a child while an intensive effort is made to correct or improve the condition necessitating placement in order to reunite the family or, in the failure of this, to provide some other permanent plan.

Foster care services shall be provided only after services aimed at

preventing the need for placement of a child in foster care have been considered, provided, or refused by the child's family.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071,; 257.175; 260.40; 393.07*

9560.0520 DEFINITIONS.

Subpart 1. **Custodian.** "Custodian" means any person who is under a legal obligation to provide care and support for a child.

Subp. 2. **Foster care service.** "Foster care service" means the service which provides substitute 24-hour-a-day family or group home care for a planned period of time, provides experience and conditions which promote normal growth, and provides to the child, the child's family, and the foster parents casework services and other treatment or community services.

Subp. 3. **Foster family home.** "Foster family home" means a family licensed under parts 9545.0010 to 9545.0260 to provide 24-hour-a-day care in their home to children who are unrelated to the family.

Subp. 4. **Group home.** "Group home" means a facility licensed by the Minnesota Department of Human Services as a group family foster home under parts 9545.0010 to 9545.0260 or as a group home under parts 9545.1400 to 9545.1500 or certified by the Department of Corrections as a group foster home or licensed or approved by an Indian tribe with the authority to do so.

Subp. 5. **Legal custody.** "Legal custody" is defined by law as the right to care, custody, and control of a child and requires the removal of the child from his or her parent(s) or legal guardian for the child's welfare and/or safety. Legal custody is for a specified length of time, but not to exceed one year.

Subp. 6. **Local social service agency.** "Local social service agency" means the local agency under the authority of the county welfare board or human service board or board of county commissioners which is responsible for social services.

Subp. 7. **Relative.** "Relative" means any of the following persons related to the child by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, niece,

nephew, uncle, or aunt.

Subp. 8. **State agency.** "State agency" means the Minnesota Department of Human Services.

Subp. 9. **Voluntary placement.** "Voluntary placement" means a placement in which the local social service agency assumes responsibility for the placement of a child after the agency has determined, in conjunction with the child's parent(s) or legal guardian and the child, if possible, that such placement is in the best interest of the child and his family.

Subp. 10. **Administrative review.** "Administrative review" is a review open to the participation of the parents of the child and conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of or the delivery of services to either the child or the parents.

Subp. 11. **Difficulty of care payment.** "Difficulty of care payment" means a supplemental maintenance payment determined by the local social services agency and based upon an assessment of the child's special needs due to existing physical, mental, or emotional handicaps. A difficulty of care payment does not include payment for services rendered by a licensed foster parent.

Subp. 12. **Dispositional hearng.** A "dispositional hearing" is a hearing held by a family or juvenile court, or another court, including a tribal court, of competent jurisdiction, or by an adminisirative body appointed or approved by the court, to determine the future status of the child, including whether the child should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis.

Subp. 13. **Foster care maintenance payments.** "Foster care maintenance payments" means payments to cover the cost of and the cost of providing a child's food, clothing, shelter, daily supervision, school supplies, and personal incidentals, and reasonable travel to the child's home for visitation. In the case of institutional care, the term includes the reasonable costs of administration and operation of the institutions which are necessary to provide the things listed in the preceding sentence.

Subp. 14. **Residential facility.** "Residential facility" means any group home, family foster home, or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county, or other political subdivision, or any agency thereof, to provide those services.

Suhp. 15. **Voluntary placement.** "Voluntary placement" is an out-of-home placement of a minor by or with participation of the social service agency, after the parents or guardian of the minor have requested the assistance of the agency and signed a voluntary placement agreement.

Subp. 16. **Voluntary placement agreement.** "Voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the social service agency and the parents or guardians of a minor child, which specifies the legal status of the child and the rights and obligations of the parents, the child, and the agency.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07 subds 1,2,3*

History: *8 SR 1537; L 1984 c 654 art 5 s 58*

9560.0530 PLACEMENT IN LICENSED FACILITY.

With the exception of placement in a relatives' home, the local social service agency shall place a child in a licensed foster family or group home except in emergencies when an unlicensed foster home may he selected. In these emergency cases, the agency shall assure that application for licensure is made within 30 days of the child's placement if the child is expected to remain in the home for 30 days or longer.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40,; 393.07*

9560.0540 LEGAL BASIS FOR PLACEMENT.

Subpart 1. **Authority for placement.** The local social service agency shall obtain the proper authority to place a child in foster care, either through written consent of the child's parent(s) or legal

guardian (voluntary placement) or with an order of the court (legal custody).

Subp. 2. **Duties of local agency as custodian.** When legal custody is given to a local social service agency, that agency shall:

A. Avoid precipitous movement of the child without orderly preplacement planning and preparation. When removal of the child is not emergent, the agency shall request permission of the court for time to place the child in an orderly fashion and, upon being granted this request, shall proceed to effect the placement according to the requirements of rule and statute.

B. Provide information, evaluations, and recommendations to assist the court in arriving at appropriate decisions and actions with regard to the child and the child's family.

C. Provide the court written reports and recommendations prior to the expiration of any order giving the agency responsibility for the child.

D. Inform the foster parents of court hearings which pertain to any foster child in their care.

E. Report to the court the placement of a child out of the jurisdiction of the court. Copies of such notification shall be forwarded to the child's parent(s) or legal guardian.

F. Request the court to order any special treatment and care needed by the child if the child's parent or legal guardian fails to provide it.

G. Obtain for its record a copy of the court's findings, decisions, disposition of the case, and any other information which may aid the county in providing services to the child.

H. Obtain the permission of the court before terminating foster care and returning the child to his or her parent(s).

I. Obtain the written consent of the parent(s) or legal guardian and the court if a child under legal custody is to be placed in a facility outside of the state. If the parent(s) or legal guardian refuse or fail to give consent, the court's written consent is sufficient.

Subp. 3. **Agency duties under voluntary foster care agreement.** When a child is placed in foster care by voluntary agreement between the local social service agency and the parent(s) or legal

guardian, the agency shall:

A. Obtain the parent(s)' or legal guardian's written consent prior to the placement; and

B. Require the parent(s) or legal guardian to agree to provide reasonable notice before seeking return of the child from placement so that the agency may prepare for the orderly return of the child in no more Man 30 days.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0550 MAJOR DECISIONS AFFECTING CHILD.

The local social service agency shall obtain the written consent of the child's parent(s) or legal guardian for major decisions affecting the child. If the parent(s) or legal guardian fail to give consent, and it is essential to the child's health or well-being, a court order shall be obtained which will provide the authority to secure whatever is needed for the child. Whenever there is a question as to what shall be regarded as a decision requiring parental or judicial consent, the agency shall consult the court.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0560 RELATIONSHIP TO OTHER AGENCIES AND INSTITUTIONS.

Subpart 1. **Formal agreements.** The local social service agency shall establish formalized agreements with those agencies and institutions which, in conjunction with the local social service agency, are serving a particular child. The purpose of such agreements is to ensure optimum cooperative planning and provision of services.

Subp. 2. **Schools.** Prior to foster care placement, the local social service agency shall involve in the placement planning the child's present school and the one which he may attend in order to assure that the child's social, educational, and extracurricular needs will be met. The agency shall initiate contact with the schools. If a child is to remain in the same school, the local social service agency shall notify the school at such time as the child is to be placed in foster

care or when the child is to be moved to another facility.

Subp. 3. **Other social service agencies.** The local social service agency shall not place a child in another county without the approval of the other county local social service agency. When a local social service agency requests services of another agency in effecting a placement, or receives such a request for service from another agency, there shall be a written agreement defining the responsibilities for services to be delivered, methods for evaluation and procedures for handling foster care payments.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0570 GROUP HOMES.

The local social service agency shall provide for the utilization of group homes for children requiring such services. The choice of facility and length of stay shall be determined by the needs of the child for the specific services offered by the facility. The child's service plan shall state the rationale for placement of the child in a group facility. The local social service agency shall provide or arrange for services not available in the group facility.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0580 SERVICE REQUIREMENTS.

All local social service agencies, in delivering foster care services, shall:

A. Provide at least one preplacement visit for the child to the foster or group home. This requirement is waived for newborn infants being placed from a hospital into a foster home.

B. Provide help to the child in his initial adjustment to the foster home through the placement worker's visit to the home within four days of the placement.

C. Plan with the parent(s) for a parent visit with the child within a week of the placement.

D. Provide casework to the child on a planned regular basis, at least twice a month for the first three months and as frequently as

necessary thereafter.

E. Provide or arrange for casework and other indicated services to the child's family on a planned regular basis, and at least twice a month, to help them:

(1) fulfill their roles and responsibilities as parents to the placed child;

(2) remedy the conditions which necessitated placement;

(3) prepare for the child's return home or, if this return home is not possible, involve them in making an alternative plan; and

(4) develop and maintain a constructive relationship with their child through a carefully planned and executed program of communication and visitation.

F. Provide assistance to the foster parents or group home operators with their responsibilities of incorporating the child into their family or facility. The foster parents and group home operators shall be provided a telephone number and an additional backup number to call during the hours the agency is closed.

G. Provide follow-up services to the family and child when the child returns home to assist with the adjustment and to prevent recurrence of the circumstances which led to placement.

H. Evaluate, in conjunction with the foster parents or group home operators, the placement experience when a child leaves the facility to ascertain the facility's potential for future placements.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0590 WAIVER.

Those requirements listed under part 9560.0580 which may not be applicable for children under state guardianship as dependent/neglected or for placements of children in emergency facilities in crisis situations may be waived. The agency may also waive those requirements under part 9560.0580 which may be contrary to the child's best interests but must document ~~the~~ rationale behind such waivers.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 157.071; 257.175; 260.40,; 393.07*

9560.0600 PROVISION FOR MEETING HEALTH NEEDS.

The local social service agency shall meet the health and denial needs of every child by:

A. assuring that each child has a health examination prior to placement or, in emergency situations, within two weeks thereafter;

B. assuring that a child's ongoing health and dental needs are met;

C. assuring that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services are offered and/or provided pursuant to parts 9505.1500 to 9505.1690 to all children eligible for the medical assistance program;

D. providing the foster or group home with information about the child's immunizations and other pertinent health data with instructions for the record to be kept up-to-date; and

E. providing to the foster or group home a written authorization for obtaining routine health care for the child with clear instructions as to who is to provide the care and how the billing is to be handled.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0610 CASE PLACEMENT PLAN AND REVIEW.

Subpart 1. **Agency compliance requirements.** For those children who are placed in foster family homes, group homes, or relatives' homes unless placement with the relative is planned to be permanent, and for whom the local social service agency has placement or supervisory responsibility, the agency shall comply with the requirements in subparts 2 to 5.

Subp. 2. **Case placement plan.** The agency shall prepare a written plan for each child who is placed in a foster home or residential facility. The plan must be prepared before the child is placed unless the child's situation requires immediate placement. If an emergency placement is necessary, the case plan must be prepared within 30 days after the initial placement.

The case placement plan must include the following components:

A. The agency's assessment of the family, including:

(1) a list of the presenting problems which brought the family to the agency, or a statement of why the agency intervened in the family situation;

(2) a discussion of services that were provided to prevent the need for the removal of the child from the home, and why the services were not successful, or why the parents requested placement of their child;

(3) a discussion of alternative plans that were considered and why foster care was chosen; and

(4) a discussion of why the particular foster home or facility was selected, including a description of the facility that was selected and the reason it was chosen, the reason a foster home was not used if the child was placed in an institution, and the reason why the child was not placed in the local county if the child was placed in another county or state.

B. A signed agreement among the agency, the parents, and, if able to understand the meaning of this agreement, the child which includes:

(1) an assessment of the specific reasons for the placement of the child in a foster home or institution, including a description of the problems or conditions in the home which necessitated removal of the child from the home;

(2) the specific actions to be taken by the parents to eliminate or correct the problems or conditions which necessitated placement, and the time period during which the actions are to be taken;

(3) the financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the foster home;

(4) the date on which the child is expected to be returned to the home of his parents;

(5) the specific action to be taken by the child, if appropriate, to change behavior which contributed to the need for placement;

(6) the social and other supportive services to be provided by the agency to assist the parents and the child during the period the child is in the foster home;

(7) the frequency of contacts of the agency with the parents and the child; and

(8) the visitation rights and obligations of the parents during the period the child is in the foster home.

C. An agreement signed by the agency, the parents, the foster parents, and if able to understand the meaning of this agreement, the child which includes:

(1) the authority and responsibility of the foster parents to arrange for medical and dental care for the child;

(2) the authority and responsibility of the foster parents to arrange for education for the child and to meet with teachers regarding the child's progress;

(3) the specific action and behavior of the child that the foster parents are to work with;

(4) the authority and responsibility of the foster parents for supervision of the child;

(5) the plan for the parents to visit the child, which includes the specific days for visits, the specific hours for the beginning and end of each visit, and any special conditions affecting visitation; and

(6) the social service to be provided by the agency to assist the foster parents, including the frequency of contacts and the person assigned to them.

D. The agency shall advise the parents of their right to receive assistance from any person or social service agency and their right to legal counsel in the preparation of the placement plan.

E. The agency shall explain to the parents that if the parents are unable to correct the conditions necessary for their child's return home, they could lose their parental rights.

F. If the agency cannot comply with any placement plan requirement, the agency shall document the reason in the record.

Subp. 3. **Administrative review.** All cases must be reviewed by an administrative panel periodically, but at least once every six months. The review must be open to the parents, the child, and the foster parents. The review must determine:

A. whether the placement remains necessary and appropriate;

B. the extent of compliance with the case plan;

C. the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; and

D. the likely date by which the child may be returned to the home or placed for legal adoption or guardianship.

Subp. 4. **Petition for court review.** As an alternative to the administrative review for children placed in foster care by voluntary agreement, the local social service agency may petition the court pursuant to Minnesota Statutes, section 260.131, subdivision 1a, for review of the foster care to determine if placement is in the best interests of the child.

Subp. 5. **Dispositional hearing.** For each child in foster care under court order pursuant to Minnesota Statutes, section 260.191, subdivision 1, the local social services agency shall petition the court for a dispositional hearing pursuant to Minnesota Statutes, section 260.191, subdivision 2, no later than 12 months after the initial dispositional hearing and annually thereafter during the continuation of foster care. For each child in foster care whose parental rights have been terminated and the child made a ward of the commissioner of human services, the local social services agency shall petition the court pursuant to Minnesota Statutes, section 260.242, subdivision 2, paragraph (d) for a dispositional hearing. The dispositional hearing must be held in a juvenile court or a tribal court of competent jurisdiction, or by an administrative body appointed or approved by the court.

When the dates of the dispositional hearing and the periodic review coincide, the dispositional hearing may replace the periodic review. A periodic review cannot substitute for a dispositional hearing.

Children in permanent foster care, whose placement was approved by the court pursuant to Minnesota Statutes, section 260.242, subdivision 2, paragraph (d) are excluded from this requirement.

Subp. 6. **Eighteen-month review of voluntary placements.** If the child is not returned to his home within 18 months after his initial

placement in a residential facility, the local social service agency shall either return the child to the home of his parents or file an appropriate petition with the court to review the foster care status of the child and make a decision as to the child's continued placement.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07 subds 1,2,3*

History: *8 SR 1537; L 1984 c 654 art 5 s 53*

9560.0620 CHILD'S OR FOSTER PARENTS' ABSENCE FROM FOSTER HOME.

The local social service agency's permission must be obtained any time the foster family and/or child are to be away from the licensed foster care facility within the state for a period exceeding three nights or, if the child leaves the state, for any period of time. However, the agency may provide specifically defined blanket permission for departures from the state where a family regularly departs the state for an identified routine purpose.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0630 PROTECTING THE CHILD'S HERITAGE.

The local social service agency shall provide for the preservation of the child's religious, racial, cultural, and ethnic heritage through:

A. placement if possible and indicated in a foster home of simil;ir background;

B. education of the foster parents as to the importance of the heritage to the child;

C. education of the foster parents as to the customs and values of the particular group; and

D. assistance to the foster parents or group home operators, so that they will be better able to provide a home which is accepting and supportive of the child's cultural, religious, racial, or ethnic identity.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0640 FINANCIAL ARRANGEMENTS AND FUNDING CONSIDERATIONS.

The local social service agency and the parent(s) shall evaluate the various resources available to meet the costs of care.

Parent(s) shall pay for the cost of care in a manner consistent with their ability to do so and with any applicable state laws or rules.

If the local social service agency establishes that the parent(s) are able to meet some or all of the costs of care, but are unwilling to do so, the following courses of action are indicated:

A. For a child under legal custody, the local social service agency shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.

B. For a child placed by voluntary agreement, the local social service agency shall file a dependency or neglect petition with the court and ask the court to establish the parents' responsibility to reimburse the agency.

The local social service agency shall make the payments directly to foster parents and other providers of care.

Statutory Authority: *MS s 256.01 subd 2; 256.82 subd 3; 256E.05 subd 1; 257.071; 257.175; 260.40; 393.07*

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. **Payments.** The local social services agency shall make payments based on the following maintenance standards:.

Age	Monthly Maintenance Standard	Initial Clothing
0-11	$212 ($244 effective January 1984)	up to $146 (up to $168 effective January 1984)
12-14	$293	up to $288
15-18	$320	up to $348

The initial clothing allowance shall be available based on the childs needs during the first 60 days of the initial placement. The

state agency shall annually review and revise the maintenance standard based on "USDA Estimates of the Cost of Raising a Child," issued by the United States Department of Agriculture, Agricultural Resources Service, Publication 1411 (October, 1982).

In The
United States Court of Appeals
For The Eighth Circuit

No. 85-5243MN

Greg Myers, etc., et al.,
Appellees,
vs.
R. Kathleen Morris, etc.,
Appellant.

No.85-5244MN

Greg Myers, etc., et al.
Appellees,
vs.
Norm Pint, et al.,
Appellants.

No. 85-5253MN

Donald Buchan, et al.,
Appellees,
vs.
Susan DeVries, etc.,
Appellant.

No. 85-5261MN

Greg Myers, et al.,
Appellees,
vs.
Douglas Tietz, etc.,
Appellant.

No. 85-5408MN

Donald Buchan, et al.,
Appellants,
vs.
Thomas Price, et al.,
Appellees.

No. 85-5409MN

Greg Myers, et al.,
Appellees,
vs.
Thomas Price, et al.,
Appellees.

No. 85-5412MN

Charles Lallak, et al.,
Appellants,
vs.
Larry Norling, etc., et al.
Appellees.

No. 86-5007MN

Greg Myers, et al.,
Appellants,
vs.
Paul Thomsen, etc.,
Appellee.

No. 86-5008MN

Donald Buchan, et al.,
Appellants,
vs.
Diane Johnson, etc., et al.,
Appellees.

Appeals from the United States
District Court for the
District of Minnesota.

Appeals from the United States
District Court for the
District of Minnesota.

Petition for rehearing en banc of Myers, Buchan, Lallak and Meger has been considered by the Court and is denied. Petition for rehearing by the panel is also denied.

April 9, 1987

Order entered at the Direction of the Court.

Clerk, U.S. Court of Appeals, Eighth Circuit.